



MANONMANIAM SUNDARANARUNIVERSITY

Tirunelveli

DIRECTORATE OF DISTANCE AND CONTINUING EDUCATION



M.COM

CORPORATELEGALFRAMEWORK

CORPORATE LEGAL FRAMEWORK

L	T	P	C

Objectives:

1. To help the students to learn about payment of wages , bonus , industrial disputes and sale of goods act
2. To know about provisions of companies act 2013.
3. To teach about Foreign Exchange Management Regulation Act 1999
4. To know the about Environmental Regulation Act
5. To create the knowledge of Legal perspective and its practice to improve the business.

UNIT I

Payment of Wages Act – Payment of Bonus Act – Industrial Disputes Act, Sale of Goods Act 1930.

UNIT II

Provisions of Companies Act 2013 relating to Company Administration – Board of Directors – Manager –Managing Director – Provisions relating to various types of meetings and their related items – powers, duties and liabilities of Directors – Corporate Governance.

UNIT III

Foreign Exchange Management Regulation Act1999, Objective and definitions under FEMA – Dealings inforeign exchange – holding of foreign exchange etc. current account transactions, capital account transactions – export of goods and service realization and repatriation of foreign exchange – Exemptions authorized person – penalties and enforcement – Compounding of offences – Directorate of enforcement –Appellate Tribunal etc.

UNIT IV

Environmental Legislation Legal and regulatory frame work – procedures for obtaining various environment clearances – role and function of Environments of Environment Tribunal / Authority –Appearance before Environment Tribunal / Authority – Environment Audit.

UNIT V

Consumer Protection Act 2019– Consumer rights, Procedures for Consumer grievances redressal, Types ofconsumer RedressalMachinaries and Forums – Competition Act 2002 – Cyber crimes, IT Act 2000 and 2002, Cyber Laws, Introduction of IPR – Copy rights, Trade Marks, Patent Act.

Learning Outcome :

After the completion of the course, the students must be able to:

1. Gain knowledge about payment of wages , bonus , industrial disputes and sale of goods act
2. Know about provisions of companies Act 2013.
3. Understanding about Foreign Exchange Management Regulation Act 1999
4. Gain knowledge of Environmental Regulation Act
5. Gain the knowledge of Legal perspective and its practice to improve the business.

REFERENCES

1. P.P.S. Gogna, Mercantile Law, S.Chand & Co. Ltd., India, Fourth Edition, 2008.
2. Dr. Vinod, K. Singhanian, Direct Taxes Planning and Management, 2008.
3. Richard Stim, Intellectual Property- Copy Rights, Trade Marks, and Patents, Cengage Learning, 2008.
4. Balanchandran V., Legal Aspects of Business, Tata McGraw Hill, 2012.
5. Daniel Albuquerque, Legal Aspect of Business, Oxford, 2012.
6. Ravinder Kumar – Legal Aspect of Business – Cengage Learning, 2nd Edition – 2011.
7. K.C. Mishra and M. Bakshi, legal and Regulatory Aspects of Insurance, CENGAGE learning, Delhi, 2005.
8. Kenneth A. Abraham, Kenneth S. Abraham Insurance laws Regulation : Cases and Material, Foundation Press, 2005.
9. Corporate Laws – Taxman Publication.

CORPORATE LEGAL FRAMEWORK

UNIT-I

Provisions of Companies Act 2013 relating to Company Administration – Board of Directors – Manager –Managing Director – Provisions relating to various types of meetings and their related items – powers, duties and liabilities of Directors – Corporate Governance.

PAYMENT OF WAGES ACT INTRODUCTION

With the growth of industries in India, problems relating to payment of wages to persons employed in industry took an ugly turn. The industrial units were not making payment of wages to their workers at regular intervals and wages were not uniform. The industrial workers were forced to raise their heads against their exploitation. In 1926, Government of India wrote to local governments to ascertain the position with regard to the delays which occurred in the payment of wages to the persons employed in Industry and the practice of imposing fines on them. Material so collected was placed before the Royal Commission on Labour which was appointed in 1929. On the report of the Commission, Government of India re-examined the subject and in February, 1933 the Payment of Wages Bill, 1933, was introduced in the Legislative Assembly and circulated for the purpose of-eliciting opinions. A motion for the reference of the Bill to a Select Committee was tabled but the motion could not be passed and the Bill lapsed. In 1935 the Payment of Wages Bill, based upon the same principles as the earlier Bill of 1933 but thoroughly revised was introduced in the Legislative Assembly on 15th February, 1935. The Bill was referred to the Select Committee. The Select Committee presented its report on 2nd September, 1935. Incorporating the recommendations of the Select Committee, the Payment of Wages Bill, 1935 was again introduced in the Legislative Assembly.

OBJECTS AND APPLICATION OF THIS ACT

This Act manages the payment of wages to specific classes of people employed in industry and its significance can't be under-evaluated. The Act ensures payment of wages on schedule and imposing of fines with no reasoning aside from those approved under the Act. The Act accommodates regarding payment of wages, fixation of the pay period, time and method of payment of wages, an obligation to look for the endorsement or approval of the Government for the acts and consent for which fines might be imposed and further more fixing of the fines.

The Act doesn't have any significant bearing to people whose payment or wage is Rs.24,000/ – or more every month. The Act additionally provides that a worker can't contract out of any privilege or right which is given or conferred to him under the Act.

According to Section 1(4) of this Act, it applies primarily to the payment of wages to people utilized or employed in any production line or to people employed (generally than in a factory) upon any railway by a rail route organization or either legitimately or through a sub-temporary worker who can also be a subcontractor, by which an individual is satisfying an agreement with a rail route organization and people utilized in a modern or other foundation which are indicated in sub-clause(a) to (g) of clause(ii) of section 2.

PAYMENT OF WAGES AND DEDUCTIONS FROM WAGES
RESPONSIBILITY FOR PAYMENT OF WAGES

(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed—

(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act

(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment

(c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;

(d) in the case of contractor, a person designated by such contractor who is directly under his charge; and

(e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act; the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to, make payment of all wages required to be made under this Act **Fixation of wage-periods—**

(1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-period) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

No wage period will surpass one month. This implies pay can be paid on day by day, week by week, fortnightly (for at regular intervals) and month to month as it were.

Payment of wage period for payment of wages to representatives by manager ought not to surpass 30 days, for example, one month. In any case, compensation can't be paid quarterly, half-yearly or once in a year.

Time of payment of wages:

- (1) The wages of every person employed upon or in—
- (a) any railway, factory or [industrial or other establishment] upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,
 - (b) any other railway, factory or '[industrial or other establishment]', shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable:

Provided that in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion.

- (2) Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated: [Provided that where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.]

- (3) The appropriate Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) 4[or to persons employed as daily-rated workers in the Public Works Department of the Central Government or the State Government] from the operation of this section in respect of the wages of any such persons or class of such persons:

5[Provided that in the case of persons employed as daily-rated workers as aforesaid, no such order shall be made except in consultation with the Central Government.]

6[Save as otherwise provided in sub-section (2), all payments] of wages shall be made on a working day.

- If the employer ends the work of an individual, at that point he should guarantee that the fired employee gets his wages before the expiry of the second working day from the date of the end of employment.
- The Appropriate Government can exclude to such a degree and furthermore subject to such conditions in the request the individual liable for the payment of wages to utilize or employ people.
- The business or the individual answerable for paying wages must guarantee that the wages are paid on a working day.

WAGES TO BE PAID IN CURRENT COINS OR CURRENCY NOTES

The employer or the individual answerable for making the payment of wages must pay in money coins or cash notes or in both. Further, he can't pay in kind. Additionally, the employer can pay the wages by means of a cheque or a direct deposit to the bank of the representative subsequent after taking a composed approval from him. Provided that the appropriate Government may, by notification in the Official Gazette, specify the industrial or other establishments, the employer shall pay to every worker employed in such industrial or other establishments, the wages only by giving a cheque or by crediting the payment in his bank account.

DEDUCTION WHICH MAY BE MADE FROM WAGES

(1) Notwithstanding the provisions of Act, the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation I —Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

Explanation II—Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:—

- (i) the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);
 - (ii) the reduction to a lower post or time scale or to a lower stage in a timescale; or
 - (iii) suspension; shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.]
-

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:—

(a) fines;

(b) deductions for absence from duty;

(c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;³[(d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;]

(e) deductions for such amenities and services supplied by the employer[or any officer specified by it in this behalf] may, by general or special order, authorise; Explanation—The word “services” in 3 [this clause] does not include the supply of tools and raw materials required for the purposes of employment;

4 [(f)deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages;(ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;(fff)deductions for recovery of loans granted for house-building or other purposes approved by the State Government, and the interest due in respect thereof;]

(g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1952 applies or any recognized provident fund as defined [in clause (38) of section 2 of the Income-tax Act, 1961 (43 of 1961)] or any provident fund approved in this behalf by [the appropriate Government], during the continuance of such approval;

(j) deductions for payments to co-operative societies as approved by the appropriate Government 1[or any officer specified by it in this behalf] or to a scheme of insurance maintained by the Indian Post Office; 2[and]deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;]

5 [(k) deductions made, with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926, for the welfare of the employed persons or the members of their families, or both, and approved by 6[the appropriate Government] or any officer specified by it in this behalf, during the continuance of such approval.

(kk) deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926);]

(l) deductions, for payment of insurance premia on Fidelity Guarantee Bonds;

(m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

(n) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collector to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage, wharfage and carnage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;

(o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;]

(p) deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;]

(q) deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.]

3 [(3)Notwithstanding anything contained in this Act, the total amount of deductions which may be made under sub-section (2) in any wage-period from the wages of any employed person shall not exceed—

(i) in cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) of sub-section (2), seventy- five per cent, of such wages, and

(ii) in any other case, fifty per cent, of such wages; Provided that where the total deductions authorised under sub-section (2) exceed seventy five per cent, or, as the case may be, fifty per cent, of the wages, the excess may be recovered in such manner as may be prescribed.

(4) Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force.

FINES

(1) No fine shall be imposed on any employed person in respect of such acts and omissions on his part as the employer, without the previous approval of 1[the appropriate Government] or of the prescribed authority, may have been specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise, than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to 2[three percent, of the wages] payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of ninety days) from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.— When the persons employed upon or in any railway, factory or [industrial or other establishment] are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

DEDUCTIONS FOR ABSENCE FROM DUTY

(1) Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a large proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work: Provided that, subject to any rules made in this behalf by 1 [the appropriate Government], if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

[Explanation.—For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or of any other cause which is not reasonable in the circumstances, to carry out his work.]

DEDUCTIONS FOR DAMAGES OR LOSS

The employer should offer a chance to the employee to clarify the explanation and cause for the harm occurred and deductions made by an employer from the worker compensation ought not to surpass the worth or measure of harm made by the employee.[Sec10(2)]All such findings and all acknowledgement thereof will be recorded in a register to be kept by the individual answerable for the payment of wages.

[(1) A deduction under clause (c) or clause (o) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person.(1A)A deduction shall not be made under clause (c) or clause (m) or clause(n) or clause (o) of sub-section (2) of section 7 until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.]

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

DEDUCTIONS FOR SERVICES RENDERED

A deduction under clause (d) or clause(e) of sub-section (2) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as the appropriate Government may impose.

DEDUCTIONS FOR RECOVERY OF ADVANCES

Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely:—

- (a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling expenses³[(aa)recovery of an advance of money given after employment began shall be subject to such conditions as 4 [the appropriate Government] may impose;]
- (b) recovery of advances of wages not already earned shall be subject to any rules made

by the appropriate Government regulating the extent to which such advances may be given and the installments by which they may be recovered.

DEDUCTIONS FOR RECOVERY OF LOANS

Deductions for recovery of loans granted under clause (fff) of sub-section (2) of section 7 shall be subject to any rules made by 2[the appropriate Government] regulating the extent to which such loans may be granted and the rate of interest payable thereon.].

DEDUCTIONS FOR PAYMENT TO CO-OPERATIVE SOCIETIES AND INSURANCE SCHEMES

Deductions under clause (j) 3[and clause (k)] of sub-section (2) of section 7 shall be subject to such conditions as 2[the appropriate Government] may impose.

MAINTENANCE OF REGISTERS AND RECORDS [SECTION 13A]

(1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.]

AUTHORITIES UNDER THE ACT INSPECTOR

The state government may designate a monitor for the purpose of this Act. Each Inspector will be regarded to be a community worker or public servant as per the Indian Penal Code, 1860 [Section 14(5)].

(1) An Inspector of Factories appointed under 2 sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) 5[The appropriate Government] may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) 1[The appropriate Government] may, by notification in the Official Gazette, Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and 2[industrial or other establishments] in respect of which they shall exercise their functions.

(4) An Inspector may,—

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made thereunder are being observed;

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or 4 [industrial or other establishment] at any reasonable time for the purpose of carrying out the object of this Act;

(c) supervise the payment of wages to persons employed upon any railway or in any factory or 5[industrial or other establishment;]

(d) require by a written order the production at such place, as may be prescribed, of any register or record maintained in pursuance of this Act and take on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act;

(e) seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer;

(f) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(4A)The provisions of the 6[Code of Criminal Procedure, 1973 (2 of 1974)]shall, so far as may be, apply to any search or seizure under this sub- section as they apply to any search or seizure made under the authority of a warrant issued under 1[section 94] of the said Code.]

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Facilities to be afforded to Inspectors.—

Every employer shall afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.]

RIGHTS OF INSPECTOR

The inspector of this act has powers referenced below:

- Inspector can make inquiries and assess whether the employers are appropriately complying with the guidelines referenced under this act.
- Inspector with such help, assuming any, as he thinks fit, enters, investigate and search any premises of any railway, production line or mechanical or other foundation at any sensible time to do the objects of this Act.
- Inspector can manage the payment of wages to people employed upon any railway or in any factory or mechanical or other foundation.
- Seize or make duplicates of such registers or archives or bits there of as he may consider significant in regard to an offence under this Act.

AUTHORITY TO HEAR THE CLAIM

To hear and choose all cases emerging out of findings from the wages, or deferral in payment of the wages, of people utilized or paid, including all issues, accidental to such claims, there will be an official referenced beneath delegated by the fitting government.

- any Commissioner for Workmen's Compensation; or any official of the Central Government practicing in capacities as—
- Regional Labor Commissioner; or
- Assistant Labor Commissioner or any official of the State Government not underneath the position of Assistant Labor Commissioner; or a directing official of any Labor Court or Industrial Tribunal, comprised under the Industrial Disputes Act, 1947 (14 of 1947) or under any comparing law identifying with the examination and settlement of

debates in power in the State; or some other official with experience as a Judge of a Civil Court or a Judicial Magistrate, as the power to hear and choose for any predefined territory all cases emerging out of conclusions from the wages, or deferral in installment of the wages, of people utilized or paid around there, including all issues accidental to such cases.

Government if thinks it essential so to do, it might select more than one expert for any predefined zone and may, by general or exceptional request, accommodate the conveyance or portion of work to be performed by them under this Act.

SINGLE APPLICATION IN RESPECT OF CLAIMS FROM THE UNPAID GROUP

- (1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if 1[deductions, have been made from their wages in contravention of this Act for the same cause and during the same wage-period or periods or if] their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.
- (2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case 1[every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in sub-section (3) of section 15].
- (3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

APPEAL

An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of section 15, or against a direction made under sub-section (3) or sub-section (4) of that section] may be preferred, within thirty days of the date on which 3[the order or direction] was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court.

Conditional attachment of property of the employer or another person responsible for payment of wages

Where at any time after an application has been made under sub-section (2) of section 15 the authority or where at any time after an appeal has been filed under section 17 by an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person permitted by the authority to make an application under sub-section (2) of section 15 the Court referred to in that section is satisfied that the employer or other person responsible for the payment of wages under section 3 is likely to evade payment

of any amount that may be directed to be paid under section 15 or section 17 the authority or the court as the case may be except in cases where the authority or court is of opinion that the ends of justice would be defeated by the delay after giving the employer or other person an opportunity of being heard may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is in the opinion of the authority or court sufficient to satisfy the amount which may be payable under the direction.

The Court alluded to in that segment is fulfilled that the business or another individual forth e-payment of wages under section 3 is probably going to side step payment of any sum that might be coordinated to be paid under section 15 or section 17 the authority or the court as the case might be with the exception of in situations where the authority or court is of conclusion that the parts of the bargains be crushed by the postponement.

In the wake of giving the employer or other individual a chance of being heard may coordinate the connection of such an extensive amount the property of the employer or another individual liable for the payment of wages as is in the assessment of the authority or court adequate to fulfil the sum which might be payable under the heading. The arrangements of the Code of Civil Procedure 1908 (5 of 1908) identifying with connection before judgment under that Code will so far as might be applied to any request for connection under sub-section(1).

MISCELLANEOUS PENALTY FOR OFFENCES UNDER THE ACT

Purposes behind punishment

- Delay in payment of wages
- Unreasonable deductions
- Overabundance reasoning for nonperformance of obligation
- Overabundance reasoning for harm or misfortune to business
- Overabundance reasoning for house-settlement courtesy or administration

Punishable with fine which will not be under 1000/-rupees yet which may stretch out toRs.7500/

- Failure in payment of wages on a working day
- Wages not paid in current coin or money notes or in both
- Inability to keep up the record for gathered fines from the employees
- Ill-advised utilization of fine gathered from employees
- Failure to show notice containing such edited compositions of this Act and of the rules made.

Punishable with fine which may stretch Rs.3000/

- Whoever blocks an Inspector in the discharge of his obligations under this Act
- Whoever adamantly will not deliver on the interest of an Inspector any register or other records.
- Whoever won't or wilfully fails to bear the cost of an Inspector any sensible office for making any entry, review, assessment, supervision, or request approved by or under this Act.

Punishable with fine which will not be under Rs.1000/ however which may stretch out to Rs.7500/

- Whoever repeats a similar offence submitted previously.

Detainment for a term which will not be short of one month yet which may reach out to a half year and fine which will not be under R.3750/ yet which may broaden toRs.20500/.

PROCEDURE IN THE TRIAL OF OFFENCES

(1) No court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20 unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such

application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20 the authority empowered under section 15 or the appellate Court as the case may be shall give such person an opportunity of showing cause against the granting of such sanction and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to –

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person or (b) the occurrence of an emergency or the existence of exceptional circumstances such that the person responsible for the payment of the wages was unable though exercising reasonable diligence to make prompt payment or

(c) The failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(3A) No Court shall take cognizance of any offence punishable under sub-section (3) or sub-section (4) of section 20 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under sub-section (1) of section 20 the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

BAR OF SUITS

No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed –

(a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

(b) Has formed the subject of a direction under section 15 in favour of the plaintiff; or

- (c) Has been adjudged in any proceeding under section 15 not to be owned to the plaintiff;
or
- (d) Could have been recovered by an application under section 15.

Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or intended to be done under this Act.

CONTRACTING OUT

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

Delegation of powers.—The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be also exercisable—

- (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;
- (b) Where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.]

DISPLAY BY NOTICE OF ABSTRACT OF THE ACT

The person responsible for the payment of wages to persons 1[employed in a factory or an industrial or other establishment] shall cause to be 2[displayed in such factory or industrial or other establishment] a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed [in the factory, or industrial or other establishment], as may be prescribed.

DELEGATION OF POWERS

The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be also exercisable—

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;—

Where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.]

PAYMENT OF UNDISBURSED WAGES IN CASES OF DEATH OF THE EMPLOYED PERSON

(1) Subject to the other provisions of the Act, all amounts payable to an employed person as wages shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known,—

(a) Be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or

(b) Where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

(2) Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages—

(a) Are paid by the employer to the person nominated by the employed person, or

(b) Are deposited by the employer with the prescribed authority, or the

RULE-MAKING POWER

The appropriate Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.

The appropriate Government] may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, Rules made under sub-section (2) may—

(a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act 6 [prescribe the form thereof and the particulars to be entered in such registers or records];

- (b) require the display in a conspicuous place or premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;
- (c) Provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;
- (d) Prescribe the manner of giving notice of the days on which wages will Be paid;
- (e) Prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be Imposed;
- (f) Prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10;
- (g) Prescribe the conditions subject to which deductions may be made Under the proviso to sub-section (2) of section 9;
- (h) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended; (i) prescribe the extent to which advances may be made and the installments by which they may be recovered with reference to clause (b) of section 12;
- 1[(I a) Prescribe the extent to which loans may be granted and the rate of Interest payable there on with reference to section 12A;
- (I b) prescribe the powers of Inspectors for the purposes of this Act;]
- (j) Regulate the scales of costs which may be allowed in proceedings under this Act;
- (k) Prescribe the amount of court-fees payable in respect of any proceedings under this Act; 2
- (l) Prescribe the abstracts to be contained in the notices required by section 25;3
- (la) prescribe the form and manner in which nominations may be made for the purposes of sub-section (1) of section 25A, the cancellation or variation of any such nomination, or the making of any fresh nomination in the event of the nominee predeceasing the person Making Nomination , and other matters connected with such nominations;
- (lb) specify the authority with whom amounts required to be deposited under clause (b) of sub-section (1) of section 25A shall be deposited, and the manner in which such authority shall deal with the amounts deposited with it under that clause;]
- (m) provide for any other matter which is to be or may be prescribed.]
- (3) In making any rule under this section the State Government may provide that a contravention of the rule shall be punishable with fine 6 [which shall not be less than seven hundred fifty rupees but which may extend to one thousand and five hundred rupees].

(4) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897), shall not be less than three months from the date on which the draft of the proposed rules was published.

(5) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in [two or more successive sessions,] and if, before the expiry of the session [immediately following the session or the successive sessions aforesaid,] both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

All rules made under this section by the State Government shall, as soon as possible after they are made, be laid before the State Legislature.

Specifically and without bias to the simplification of the previous power, rules made under sub-section(2) may-

- a. Require the up keep of such records, registers, returns and notification as are essential for the authorization of the Act and recommend the structure there of;
- b. Require the display in an obvious spot on-premises where work is carried on of notification determining paces of wages payable eto people utilized on such premises;
- c. Accommodate the regular inspection of weights, measures and weighing machines utilized by employers in checking the wages of people employed by them;
- d. Recommend the way of pulling out of the days on which wages will be paid;
- e. Recommend the position capable to favour under sub-section(1) of section8 and deductions in regard to which fines might be forced;
- f. Recommend the methodology for the inconvenience of fine sunder section8 and forthe creation of the deductions to in section 10;

- g. recommend the conditions subject to which deductions might be made under the proviso to sub-section(2) of section 9;
- h. recommend the power equipped to support the reasons on which the returns of fines will be consumed;
- i. prescribe the degree to which advances might be made and the portions by which they might be recovered concerning clause (b) of section 12;
- j. direct the scale of costs which might be permitted in procedures under this Act;
- k. prescribe the amount of court-charges payable in regard to any procedures under this Act; and
- l. prescribe the modified works to be contained in the notification required by section 25.

In making any rule under this section, the State Government may give that a contradiction of the rule will be punishable with fine which may reach out to Rs.200. Thus the Payment of Wages Act is to regulate the payment of wages to the employees.

PAYMENT OF BONUS ACT

The practice of paying bonus in India appears to have originated during First World War when certain textile mills granted 10% of wages as war bonus to their workers in 1917. In certain cases of industrial disputes demand for payment of bonus was also included. In 1950, the Full Bench of the Labour Appellate evolved a formula for determination of bonus.

A plea was made to raise that formula in 1959. At the second and third meetings of the Eighteenth Session of Standing Labour Committee (G. O.I.) held in New Delhi in March/April 1960, it was agreed that a Commission be appointed to go into the question of bonus and evolve suitable norms. A Tripartite Commission was set up by the Government of India to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Government of India accepted the recommendations of the Commission subject to certain modifications. To implement these

recommendations the Payment of Bonus Ordinance, 1965 was promulgated on 29th May, 1965. To replace the said Ordinance the Payment of Bonus Bill was introduced in the Parliament.

The payment of Bonus Act, 1965 aims to regulate the amount of bonus to be paid to the persons employed in establishments based on its profit and productivity. The act is applicable to the whole of India for all establishments which had twenty or more persons employed on any day during the year.

STATEMENT OF OBJECT AND REASONS

A Tripartite Commission was set by the Government of India by their resolution No.WB-20(9)/61, dated 6th December, 1961 to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Commission's Report containing their recommendations was received by the Government on 24th January, 1964. In their Resolution No. WB- 20(3)/64, dated the 2nd September, 1964, the Government announced acceptance of the Commission's recommendations subject to a few modifications as were mentioned therein. With a view to implement the recommendations of the Commission as accepted by the Government, the Payment of Bonus Ordinance, 1965, was promulgated on 29th May, 1965. The object of the Bill is to replace the said Ordinance.

OBJECTIVES OF THE ACT

The objectives of the Bonus Act (Payment of bonus Act) areas follows:

- To impose a legal responsibility upon the employer of every establishment covered by the Act to pay the bonus to employees.
- To designate the minimum and maximum percentage of bonus.
- To prescribe the formula for calculating bonus.
- To provide redressal mechanism.

APPLICABILITY OF THE ACT

Establishments to include departments, undertakings and branches.--

Where an establishment consists of different department or undertakings or has branches, whether situated in the same place or in different places, all; such departments

or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act: Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

- It applies to any factory or establishment which had twenty or more workers employed on any day during the year.
- The act does not apply to then on-profit making organisations.
- It is not applicable to establishments such as LIC, hospitals which are excluded under Section 32.
- It is not applicable to establishments where employees have signed an agreement with the employer.
- It is not applicable to establishments exempted by the appropriate government like sick units.

DEPARTMENTS, UNDERTAKINGS AND BRANCHES

According to the Bonus Act, any different departments or undertakings or branches of an establishment of whether located in the same place or at different areas should be considered as parts of the similar establishment for computation of bonus under the Act.

A separate balance sheet regarding profit and loss of the establishment in the year had to be prepared and maintained, concerning such department or undertaking, or branch should be treated as a separate establishment for computation of bonus for the year.

ELIGIBILITY FOR BONUS

Eligibility for bonus—

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided

- The employee is receiving salary or wages up to Rs.21,000 per month

- The employee may be engaged in any work whether skilled, unskilled, managerial, supervisory etc.
- The employee has worked in the establishment for not less than 30 working days in the same year.

DISQUALIFICATION OF BONUS

Disqualification for bonus—

Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for --

- (a) fraud; or
 - (b) riotous or violent behaviour while on the premises of the establishment;
- or
- (c) theft, misappropriation or sabotage of any property of the establishment.

Computation of gross profits—

The gross profits derived by an employer from an establishment in respect of the accounting year shall—

- (a) in the case of a banking company, be calculated in the manner

specified in the First Schedule;

- (a) in any other case, be calculated in the manner specified in the Second Schedule;]

Computation of available surplus—

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6;

2[Provided that the available surplus in respect of the accounting year commencing on any day 1968 and in respect of every subsequent accounting year shall be the aggregate of

- (a) the gross profits for that accounting year after deducting there from the sums referred to in section 6; and
- (b) an amount equal to the difference between --
 - (i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

Sums deductible from gross profits.—

The following sums shall be deducted from the gross profits as prior charges, namely:-

- (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be: Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from the date) continue to be such notional normal depreciation;
- (b) any amount by way of 1[development rebate or investment allowance or development allowance] which the employer is entitled to deduct from his income under the income-tax Act;
- (c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- (d) such further sums as are specified in respect of the employer in the 2[Third Schedule].

PAYMENT OF MINIMUM AND MAXIMUM BONUS

Payment of minimum bonus.—Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year: Provided that where

an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effecting relation to such employee as if for the words “one hundred rupees”, the words “sixty rupees” were substituted.]

Payment of maximum bonus.—

(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting; year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent, of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.]

Calculation of bonus with respect to certain employees.—Where the salary or wage of an employee exceeds 4[two thousand and five hundred rupees] per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wage were [two thousand and five hundred rupees] per mensem.]

Proportionate reduction in bonus in certain cases.—Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent, of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.]

Computation of number of working days.—For the purposes of section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which--

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
- (b) he has been on leave with salary or wage;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (d) the employee has been on maternity leave with salary or wage, during the accounting year.

Deduction of certain amounts from bonus payable under the Act. –

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

TIMELINE FOR PAYMENT OF BONUS

[All amounts] payable to an employee by way of bonus under this Act shall be paid in cash by his employer –

(a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) in any other case, within a period of eight months from the close of the accounting year: Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extended the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

COMPUTATION OF BONUS

As per the Section 4 and Section 7 together with the Schedule 1 and 2 deal with the calculation of gross profit and available surplus out of which 67% in case of companies and 60% in other cases would be allocable surplus.

To compute the available surplus the sums, so deductible from the gross profits are:

- All direct taxes under Section 7
- The sums which are particularised in the schedule
- The allowance for investment or development in which the employer is allowed to deduct from his income under the Income Tax Act.

Available Surplus=Gross Profit–(deduct) the following:

- Depreciation is allowable in Section 32 of the Income-tax Act.
- Development Allowance.

Maintenance of register, records, etc. – Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may prescribed.

INSPECTORS UNDER SECTION 20

Section 20 enables the relevant government to appoint Inspectors for this Act after notification in the official gazette.

Inspectors. – (1) The appropriate Government may, by notification on the Official Gazette, appoint such person as it think fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction

(2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with –

- (a) Require an employer to furnish such information as he may consider necessary;
- (b) at any reasonable time and with such assistance, if any, as he thinks fit enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;
- (c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;
- (d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;
- (e) exercise such other powers as may prescribed.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian penal Code (45 of 1860).

(4) Any person required to produce any accounts, book, register or other documents or to give information by an Inspector under sub-section (1) shall be legally bound to do so.

(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of any its books of account or other documents which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provision of section 34A of the Banking Regulation Act, 1949 (10 of 1949).

DUTIES OF THE EMPLOYER

The following duties to be carried out by the employer:

- To estimate and pay the annual bonus as required under the Act.

To maintain the following registers:

- The register should show the computation of allocating the surplus in the respective form.
- The register should be maintained regarding the payment of the bonus to the employees.
- The records should be produced for inspection and all such information should be maintained properly.

RIGHTS OF EMPLOYERS

The following are the rights to be claimed out by the employers:

- Right to notice any disputes relating to application or interpretation of any provision of the Act, to the Labour Court or Labour Tribunal.
- Right to make a valid deduction from the bonus due to an employee, such as festival bonus paid and financial loss created by the misbehaviour of the workers.
- Right to take the bonus of an employee, who has been dismissed from service form is behaviour, violent behaviour, fraud, misappropriation or sabotage of any property of the establishment.

RIGHTS OF EMPLOYEES

The following are the rights to be claimed out by the employees:

- Right to claim bonus due under the Act and to request an application to the Government for the redemption of bonus amount which is unpaid, within one year of its being due.
- Right to notice any dispute to the Labour Court/Tribunal.

Employees who are not eligible for the Payment of Bonus Act, cannot raise a dispute about the bonus under the Industrial Disputes Act.

- Right to seek clarification and obtain information, on any item in the accounts of the establishment.

Penalty.-if any person-

- (a) contravenes any of the provision of this Act or any rule made there under, or
- (b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

OFFENCES AND PENALTIES

Offences by companies.-(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all; due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. – For the purposes of this section, --

- (a) “company” means anybody corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal or officer responsible for the conduct of its business, should be deemed to be guilty of that offence, unless the person concerned proves that the crime was committed out of his knowledge or that he exercised all due diligence.

Cognizance of offences. – (1) No court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the appropriate Government 1[or an officer of that Government (not below the rank of a Regional Labour Commissioner in the case of an officer of the Central Government, and not below the rank of a Labour Commissioner in the case of an officer of the State Government) specially authorised in this behalf by that Government].

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

Protection of action taken under the Act. – No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made there under.

SALE OF GOODS ACT, 1930

Definition

Section 2 of the Sales of Goods Act of 1930 deals with the definitions relating to the subject. Some of the clauses of Section 2 are mentioned below:

Buyer

In clause 1 of Section 2, the term ‘buyer’ is defined to include both a person who actually purchases the goods and a person who is almost willing to do so. However, it was observed in *Helbyv. Mathews (1895)* that a person is not regarded as a buyer if an agreement essentially grants him the option to purchase the products without subjecting him to any legal obligation to do so.

Delivery

Clause 2 defines the term ‘delivery’ to involve a transaction of a transfer of possession which is done voluntarily. Delivery can be actual or constructive. It becomes ‘actual’ when

The buyer receives the actual products or receives the key to the warehouse where the goods are kept. Whereas, when a delivery is made without affecting the custody or actual ownership of the item, such as when at acknowledging a delivery or making a symbolic delivery, it is said to be a constructive delivery.

Goods

Clause 7 deals with the “goods,” which refers to any movable property that is neither money nor actionable claims.

The following list of items is considered goods as per the interpretations given by the Indian judiciary:

1. The shares of a company were considered goods by the court in *Bacha F. Guzdar v. CIT* (1955).
2. While *Rash Behari v. Emperor* (1936) held that gas and electricity are not goods, *Associated Power Co. v. Ram Ratan* (1970) held electricity to be ‘goods’.
3. The ‘Standing timber’ on land which was agreed to be severed from the land before the sale, was held to be goods in the case of *State of Maharashtra v. Champalal* (1971).
4. The interest of the partners in the partnership assets which consists of any immovable property was considered to be a movable property and thus good in the case of *Narayana v. Bhaskar Krishnappa* (1966).
5. Sugarcane which was supplied to a sugar factory was considered to be good in the U.P. *Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn.* (2004).

The following list of items was considered to be ‘not goods’ under this Section:

1. The goods supplied by a building contractor in the execution of building construction are not goods as per the case of *Mahadev v. State of Bombay* (1959).
2. Where a person entrusts documents to his lawyer, those documents will not be considered goods under this Section as per the case of *R.D. Saxena v. Balram Prasad Sharma* (2000).
3. The sale and purchase of lottery tickets are actionable claims which are excluded from the definition of goods. Therefore, it will not be goods as was held in the case of *Union of India v. Martin Lottery Agencies Ltd.* (2009).

Specific goods

Clause 14 of Section 2 deals with ‘Specific Goods.’ Specific goods are utilized as an alternative to generic or unascertained goods. The items are specific if they are identified at the moment of sale. However, they are unascertained goods if the items are not identified at the moment of the sale. For example, the sale of a car in a person’s possession

would be considered to be the sale of a specific good. Whereas a sale of a car from a showroom that contains different variants of a car is a contract for the sale of unascertained goods.

FORMATION OF A CONTRACT

Contract of Sale

Section 4 of the Act discusses sales and the agreement to sell. The term “contract of sale” is generic in nature. It tends to include both agreements to sell and sale. It was formerly called “bargain and sale.”

Subsection 3 of Section 4 defines the sale and the agreement to sell.

The contract of sale is known as a sale when the property in the products is transferred from the seller to the buyer under it, thereby transferring ownership from the seller to the buyer. A sale can also be called an executed contract of sale. However, a contract is referred to as an agreement to sell when the transfer of property in the goods is supposed to happen at a future date or is dependent on the fulfilment of a subsequent condition.

An agreement to sell may also be called an executory contract of sale.

It was held in the *State of Uttaranchal v. Khurana Brothers (2011)* that when the time elapses or the condition gets fulfilled, at that time an agreement to sell becomes a sale.

Subsection 1 also permits a person who owns the goods partially to sell the goods or transfer the ownership to that extent.

In *Camera House, Bombay v. State of Maharashtra (1969)*, the Bombay High Court ruled that providing a print, processing film, and taking a picture in a studio are all separate transactions. Therefore, it is obvious that the first two contracts call for the use of a photographer’s artistic talent and labour. However, the final contract for providing copies of it to clients is a contract of sale.

Absolute and conditional contracts of sale

A contract of sale may be either absolute or conditional. When the property is actually sold to the buyer and transferred completely, it is considered absolute. If the parties annex conditions to the contract, it is conditional. These situations could be either subsequent or preceding.

When a sale is to be completed subject to the fulfilment of a specific condition, the condition is known as a “condition precedent.” It is common for an auction sale of goods to include a clause stating that if the purchase price is not made within a certain period of time, the item may be resold. In this scenario, there is a real sale when the property is transferred to the buyer, but if the transaction is not completed, the seller retains ownership of the goods.

Difference between sale and agreement to sell

1. A sale results in the transfer of the buyer’s general ownership of the items, or it generates a *jus in rem*. An agreement to sell does not transfer property; rather, it allows either party to take legal action against the other person and general estate if the other fails to uphold his end of the bargain. (*Sales Tax Officer v. Buddha Prakash Jai Prakash (1954)*)
2. After a sale, if the purchaser does not pay for the items, the seller may file a law suit under Section 55 (suit for price) to recover the purchase price. When there is just an agreement to sell anything and the buyer refuses to take delivery of the goods and pay for them, the seller may only bring a claim for damages under Section 56 (damages for non-acceptance).
3. If there is a sale agreement in place and the seller breaches it, the buyer alone has a claim for damages as their own remedy. The seller is still the rightful owner of the items, and he is free to dispose of them however he sees fit. But if a sale has already been made and the seller breaches it, the buyer is likewise entitled to the same legal recourse against the seller as an owner of the goods would have in relation to the items themselves.
4. If there is a sale agreement and the products are destroyed, the seller is responsible for the loss; nevertheless, if there has been a sale, the buyer is responsible for the loss even though the things may not have actually been in his possession.

PERFORMANCE OF THE CONTRACT

Rights of the seller under the Sale of Goods Act, 1930

1. To reserve the right to dispose of the goods until certain conditions are met in accordance with Section 25(1).
2. To consider a sale on approval to be completed when the buyer conveys his acceptance, performs an act adopting the sale, or retains the goods after the stated date (or a reasonable amount of time) without providing notice of rejection. (Section 24)

3. To only deliver the goods upon request from the buyer. (Section 35)
4. To provide the goods in instalments when agreed upon.[Section39(1)]
5. To assert a lien and maintain ownership of the items until the purchase price is paid[Section47(1)]
6. Until the price is paid, the goods may be stopped in transit and returned to the owner[Sections 49(2) and 50].
7. To re sell the goods in certain conditions.(Section54)
8. Keeping the goods from being delivered until the buyer acquires ownership. [Section46(2)]
9. When ownership of the goods has been transferred to the buyer or when the price is due on a specific date under the terms of the contract and the buyer does not make the payment, the seller may bring a price claim against the buyer. [Section 55]

Duties of the seller under the Sale of Goods Act, 1930

1. To make the necessary arrangements for the buyer to receive ownership of the goods.
2. Determining and aligning the goods to the sale contract.
3. To transfer the buyer's legal and complete ownership of the goods.
4. To fulfil the contract's requirements for the delivery of the goods. (Section31)
5. To guarantee that the provided good is free to any implied or stated conditions or warranties.
6. To prepare the goods for delivery and deliver them as and when the buyer requests.(Section35)
7. The seller must fulfil the obligation to deliver the items on time, or at least by the agreed-upon hour and reasonable time. [Sections 36(2)and (4)]
8. To pay for all costs associated with and related to making a delivery, until the point at which the goods are placed in a deliverable state. [Section36(5)]
9. To provide the goods in the predetermined quantity.[Section37(1)]
10. The seller must ensure that only when the buyer requests it, deliver the goods in phases.[Section 38(1)]

11. The seller must make insurance arrangements for the goods while they are in the carrier's care or transfer.[Section 39(2)]
12. To promptly notify the customer when the goods are being shipped by sea so that he can arrange for insurance[Section 39(3)]

Rights of the buyer under the Sale of Goods Act 1930

1. To receive the items in accordance with the contract.(Sections 31&32)
2. To reject the goods when they don't match the contract's specifications regarding description, quality, or quantity. (Section 37)
3. When goods are given in instalments without a written agreement to that effect, the contract may be terminated. [Section 38(1)]
4. The seller must inform the buyer when the goods are being shipped by sea so that the buyer can make insurance arrangements. [Section 39(3)]
5. To be given a fair chance to inspect the goods and determine whether they are in compliance with the contract. (Section 41)
6. To file a suit against the seller if he doesn't deliver the goods in order to get their money back.
7. If the seller wrongfully fails or declines to deliver the goods to the customer, the buyer has the right to sue the seller for damages.(Section 57)
8. To bring a specific performance claim against the seller.
9. To file a claim against the seller for damages for failure to uphold a warranty or a situation that is deemed to be a violation of a warranty (Section 59)
10. To file a claim against the seller for damages for a potential violation of the contract (Section 60)
11. When a seller breaches a contract and must refund the customer's money, the buyer may sue the seller for interest (Section 61)

Duties of the buyer under the Sale of Goods Act, 1930

1. To accept the delivery of the goods when the seller is willing to fulfil their end of the bargain. (Section 31)

2. To make the required payment in order to obtain the goods.
3. To submit a delivery request for the goods. (Section 35)
4. To insist on getting the goods delivered at a fair time. [Section 36(4)]
5. To accept instalment deliveries of the items and paying for them in accordance with the arrangement. [Section 38(2)]
6. To accept the risk of deterioration during transit when the goods are to be delivered somewhere other than the location where they were purchased (Section 40)
7. To notify the seller if the purchaser declines or rejects the products. (Section 43)
8. After the seller offers delivery, the buyer must accept delivery of the goods in a timely manner (Section 44)
9. To fulfil the contract's requirements by paying the amount at the point at which the buyer acquires ownership of the goods. (Section 55)
10. To cover losses for failing to accept the goods. (Section 56)

Goods were confirmed to have been received in complete and in satisfactory functioning condition (*State Bank of Mysore v. Machado Computer Services*) (2009). As a result, it was determined that the plaintiff had exercised his entitlement under Section 41 of the Sale of Goods Act and was considered to have accepted the goods upon making the notification of acceptance to the supplier as specified in the delivery challan.

According to Section 42 of the Act, both the quality and quantity of the supplied goods were accepted. Further, the description of the goods as to the make or brand is also deemed to have been accepted upon such acceptance following examination of the goods specifically accepted, and no defect could be stated to be in respect of such brand in accordance with the second provision to Section 16 of the Act. Therefore, the supplier's obligation under the sales contract was fulfilled. The goods were accepted by the plaintiff. The plaintiff was therefore obligated to pay for the goods after accepting them in accordance with the injunction granted by Sections 31 and 32 of the Act.

RIGHTS OF AN UNPAID SELLER UNDER THE SALE OF GOODS ACT, 1930

According to Section 45 of the Act of 1930, a seller of goods is considered "unpaid"

if he has not received the whole of the price, as well as if the buyer has provided him with a bill for the amount due but the bill is not honoured. The phrase “the whole of the price” refers to the total sum agreed upon with respect to the entire contract, and in the event that the contract is severable, the price of the severable component is divided. In each instance, it is an issue of fact as to whether it was given as an unconditional or conditional payment. Partially unpaid sellers are on par with fully unpaid sellers.

The unpaid seller, by the implications of Section 46, has the following rights:

Right to lien

The lien of an unpaid seller is a right to retain possession of the goods until tender or payment of the price. The unpaid seller is entitled to alien only in three situations, as mentioned in Section 47 of the Act.

1. There is no stipulation as to credit. The seller is liable to deliver the goods to the buyer when demanded by the buyer but he has no right to have possession of the goods till he pays the price.
2. A sale on credit operates as a waiver of the lien during the currency of the credit,
3. If the buyer becomes insolvent before the price is paid, and the seller is in possession of the goods, he is entitled to retain possession even if the goods are sold on credit and the term of credit has not expired.

A lien depends on the actual ownership of goods. When the possession is removed from the seller, the lien disappears along with it, as noted in Section 49. Under the following situations, an unpaid seller of goods loses his lien there on:

1. When he transfers ownership of the goods without reserving it to a carrier or other bailee with the intention of delivering it to the buyer.
2. When the buyer lawfully obtains the possession of the goods.
3. When the seller expressly or impliedly waives his lien rights.

Rights of stoppage of goods in transit

This right entails stopping the products while they are in a carrier’s control or lodged at any point during transmission to the buyer, regaining ownership of them, and holding onto them until the price is tendered or paid.

To exercise the right, the seller must be unpaid, the buyer must be insolvent, the seller must have parted with possession of the goods, and the buyer must not have acquired them.

Additionally, the delinquent seller may use both of his stoppage-in-transit rights:

- By assuming actual possession of the goods.
- By providing a statement to the seller identifying who is in possession of the goods.

Such instructions may be delivered to the person who actually owns the goods. In the latter scenario, the contract must be reached well in advance to allow the superior to contact his agent or servant in time to deliver the goods to the consumer.

He could be held accountable for the conversion if he offers the goods to the buyer while making an error. The seller must put up with the redelivery expenses.

Suit for breach of contract

Suit for price by the seller against the buyer

Sub-section (1) of Section 55 deals with a contract where the property in the goods has passed irrespective of delivery. This may involve two types of cases:

1. Suit for the price of goods sold and delivered.
2. Suit for the price of goods bargained and sold.

The contingent situations contemplated by sub-section (2) are as follows:

1. Non-delivery
2. Non-appropriation of the goods to the contract
3. Property in the goods that are continuing to vest in the seller.

Suit for damages by the seller against the buyer for non-acceptance of the goods

Section 56 says that where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance of the goods.

The Indian Contract Act of 1872's provisions Section 73 and Section 74 serve as the foundation for calculating the damages. In accordance with Section 73 of the Indian Contract Act, when a contract is broken, the party who suffers as a result of the breach is entitled to receive compensation for any loss suffered by him as a result; which naturally

results from the breach in the ordinary course of events or which the parties knew would likely occur when they entered into the contract.

The methods that were available for resolving the discomfort brought on by the contract's non-performance must also be taken into consideration when calculating the loss or damage brought on by a breach of contract.

The day on which the contract should have been fulfilled by delivery and acceptance as specified by the agreement, or, in the absence of a time frame, at the moment of non-performance, is the date at which the market price is to be determined.

Suit for damages by the buyer against the seller for non-delivery of the goods

The buyer may file a suit against the seller for non-delivery damages if the seller willfully neglects or declines to deliver the goods to the buyer under Section 57.

The buyer has all the rights of an owner against individuals who act on the property in a way that violates his rights once it has passed, provided that he is entitled to instant possession. Therefore, if the seller wrongfully resells them, the buyer may bring a suit against both the seller and the second buyer. However, the rights against the latter may be limited by the provisions of sections 30 and 54.

The seller cannot be accused of ignoring or refusing to deliver the goods if the buyer has not made payment for earlier deliveries within 15 days of the date of delivery and the seller withholds delivery. The seller would have the right to demonstrate that it would be impossible for him to fulfil his end of the bargain.

Suit for specific performance by the buyer against the seller

Under Section 58 of the Act, in any suit for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of keeping the goods in exchange for payment of damages. This is subject to the provisions of Chapter II of the Specific Relief Act, 1877. The plaintiff may file an application at any time prior to the decree, and the court may grant the decree unconditionally or with such terms and conditions as damages, payment of the purchase price, or other matters as it may deem just. This Section is the only one in this Act that deals with the equitable right to a specific performance.

Suit by the buyer against the seller for breach of warranty

Section 59 of the Act deals with four remedies for the breach of warranty. These are as follows:

1. If the loss caused by the warranty violation is less than the purchase price, the buyer may request a reduction in the price. The rule of a price reduction or extinction is not a set-off and only applies to claims that are cross-subject to the same contract.
2. If the loss matches the price, the buyer may refuse to pay it at all.
3. The buyer may refuse to pay the price as well as claim the excess if the loss exceeds the cost.
4. In each of these scenarios, he has the option of paying the amount or suing the seller for warranty breach damages. The buyer has three options for pursuing his claim: through litigation, set-off, or counter claim.

A breach of warranty does not give the buyer the right to return the goods, and his only options are those listed in Section 59, which are to hold the seller liable for the breach of the warranty by reducing or eliminating the price or suing the seller for damages as a result. According to claim for damages when the warranty is breached.

This Section the definition of ‘warranty’ provided in Section 12(3), only the buyer has the right to file a outlines the procedures a buyer who, in either scenario, has a claim for damages may use to pursue it. It does not address situations in which a fraudulent misrepresentation may allow the buyer to void the contract or situations in which, according to the contract’s specific terms, the buyer may return the goods in the event of a warranty breach.

Suit for damages by seller or buyer for anticipatory breach of contract

Section 60 outlines the procedure a buyer who, in either scenario, has a claim for damages may use to pursue it. It does not address situations in which a fraudulent misrepresentation may allow the buyer to void the contract or situations in which, according to the contract’s specific terms, the buyer may return the goods in the event of a warranty breach. Very frequently, situations may emerge where the promisor declares that he will not carry out his share of the performance when the time for performance approaches, even when the performance is to take place in the future. Not doing an act while it is not yet contractually required is not a breach. For this reason, this Section allows the promisee the choice of treating the contract as cancelled in advance or waiting until the day of performance to treat it as subsisting.

UNIT II

Provisions of Companies Act 2013 relating to Company Administration – Board of Directors – Manager –Managing Director – Provisions relating to various types of meetings and their related items – powers, duties and liabilities of Directors – Corporate Governance.

UNIT– II

‘PROVISION OF COMPANIES ACT 2013 RELATING TO COMPANY ADMINISTRATION

The Companies Act

The Companies Act, 2013 passed by the Parliament has received the assent of the President of India on 29th August, 2013. The Act consolidates and amends the law relating to companies. The Companies Act, 2013 has been notified in the Official Gazette on 30th August, 2013. Some of the provisions of the Act have been implemented by a notification published on 12th September, 2013. The provisions of Companies Act, 1956 is still in force.

Formation of company

(1) A company may be formed for any lawful purpose by— (a) seven or more persons, where the company to be formed is to be a public company; (b) two or more persons, where the company to be formed is to be a private company; or (c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration: Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles: Provided further that such other person may withdraw his consent in such manner as may be prescribed: Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed: Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed: Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

- (2) A company formed under sub-section (1) may be either—
- (a) a company limited by shares; or
 - (b) a company limited by guarantee; or
 - (c) an unlimited company.

Incorporation of company

(1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:— (a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed; (b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with; (c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief; (d) the address for correspondence till its registered office is established; (e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed; (f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and (g) the

particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that subsection in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

(4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.

(5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.

(7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such 28 company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,— (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its

memorandum and articles, in public interest or in the interest of the company and its members and creditors; or (b) direct that liability of the members shall be unlimited; or (c) direct removal of the name of the company from the register of companies; or (d) pass an order for the winding up of the company; or (e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,— (i) the company shall be given a reasonable opportunity of being heard in the matter; and (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

REGISTER OF MEMBERS

- (1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—
 - a) Register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;
 - b) Register of debenture-holders; and
 - c) register of any other security holders.
- (2) Every register maintained under sub-section (1) shall include an index of the names included there in.
- (3) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996), shall be deemed to be the corresponding register and index for the purposes of this Act.
- (4) A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (1), called—foreign register containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.
- (5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.

DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE

- (1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.
- (2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.
- (3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.
- (4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.
- (5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
- (6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.
- (7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified under the first proviso to sub-section (1) of section 403, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

- (8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.
- (9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

INVESTIGATION OF BENEFICIAL OWNERSHIP OF SHARES IN CERTAIN CASES

Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may apply to such investigation as if it were an investigation ordered under that section.

Power to close register of members or debenture-holders or other security holders

- (1) A company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.
- (2) If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

ANNUAL RETURN

Annual return.—

- (1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding— (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; (b) its shares, debentures and other

securities and shareholding pattern; (c) its indebtedness; (d) its members and debenture-holders along with changes therein since the close of the previous financial year; (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year; (f) meetings of members or a class thereof, Board and its various committees along with attendance details; (g) remuneration of directors and key managerial personnel; (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed; (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and (k) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice: Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

(2) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

(3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.

(4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

(5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may

extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Directors

Board of Directors are key constitute players for formulating and implementing corporate governance practices in the heart of the company machinery by making key decisions pertaining to setting long term corporate strategy of the company, sharing high responsibility to run the company on good governance structure, bringing effective board leadership to tackle the company's operations at all levels and monitoring its performance in a fair and transparent manner.

Officers and key managerial personnel

Key Managerial Personnel (KMP) and other officers of the company who serve the top –management level under the Companies Act, 2013 includes the Chief Executive Officer, Managing Director or Manager; Whole Time Director; Company Secretary.

Key Managerial Personnel would advise the Boards to achieve the corporate goals and by adhering to Good Corporate Governance practices. KMP would also have to report to the Sectoral Regulators for the non-compliances made by the company. The new law bestows upon KMP's a significant role to run the company's operations in such a manner by adhering to laws in true letter and spirit in order to spell out the will of directors and other stakeholders effectively and efficiently in achieving company's twin objective of profit maximization and maximization of wealth.

Changes in Companies Act, 2013 which has waved its way from principle of corporate governance practices as the new key change in the act. The Companies Act, 2013 has taken a foot forward from SEBI's Clause 49 of listing agreement by introducing provisions in the Companies Act 2013 which promotes corporate governorship code in such a manner that it will no longer be restricted to only listed public companies but also

unlisted public companies. Companies Act, 2013 lays greater emphasis on corporate governance as it clearly provides the rules and regulations for the same.

Board of Directors

Board of directors is the decision making body of any company. It is the duty of the board to comply with the rules and regulations. So it is very important that a company constitutes board of directors as per the provisions of Companies Act, 2013.

Composition of Board

Section 149 of the Companies Act, 2013 provides for appointment of minimum three directors in a public company and two directors in a private company. A board can have a maximum of fifteen directors but can appoint more directors subject to special approval.

Women Director

It is mandatory to appoint a women director in the following classes of company:

- Listed company;
- Public unlisted company having paid-up share capital of one hundred crore rupees or more, or having a turnover of 300 crores or more.

Resident Director

Section 149(3) mandates that every company will have one director who has stayed in India for a period of not less than 182 days.

Independent Director

Independent directors are impartial and bring expertise to the board. They play an important role in resolving conflicts among shareholders and the company. Section 149(6) provides for the qualifications for appointing an independent director in a public company. As per Companies Act, 2013 public listed company shall have at least one-third of directors as independent directors and public unlisted company will have two directors if they meet the following criteria:

- Public companies having a share capital of 10 crore or more;
- Public companies having a turnover of 100 crore or more;
- Public companies having outstanding loans, debentures and deposits of more than 50 crores.

According to section 134 of Companies Act, 2013 the director has to give a detailed financial report which includes the director's responsibility statement. This provision has been enacted to make directors accountable for their actions.

Stakeholder Relationship Committee

As per section 178(6) of Companies Act, 2013 if a company has more than one thousandshareholders, debenture-holders, deposit-holders or any other security holders in a financial year then it is mandatory to constitute a stakeholder relationship committee. The main of the committee is to resolve the conflicts between the shareholders and the board of directors and address their grievances. The chairperson of the board shall be a non-executive director.

Audit Committee

The Audit Committee looks after the financial reports and disclosures of a company. It is one of the most important components of a corporate governance structure. Under section 177 of Companies Act, 2013 the following class of companies are required to constitute audit committee and they are as follows:

- Listed company
- Public company having a share capital of more than 10 crores;
- Public company having a turnover of Rs. 100 crores;
- Public companies having deposits, outstanding loans or debentures more than 50 crores.

An audit committee will consist of a minimum of 3 directors and independent directors will form the majority. Section 177(4) provides duties of the audit committee and it has to act in accordance with the same.

Internal Audit

Companies Act, 2013 has mandated the internal audit for certain classes of companies as specified under Section 138 of the Companies Act, 2013.

Serious Fraud Investigation Offence (SFIO)

Section 211 (1) of the Companies Act, 2013 shall establish an office called the

Serious Fraud Investigation office to investigate fraud relating to Company. The powers are given to SFIO under the Act as mentioned that he can investigate into the affairs of the company or on receipt of report of Registrar or inspector or in the public interest or request from any Department of Central Government or State Government.

Nomination and Remuneration Committee

Then nomination and remuneration committee decides the selection criteria for the key managerial personnel (KMP) and determines the remuneration of the KMP's and directors. Section 178 of Companies Act, 2013 mandates the constitution of committee for the following class of companies:

- Listed company;
- Public company having a share capital of more than Rs. 10 crores;
- Public company having a turnover of Rs. 100 crores;
- Public company having deposits, outstanding loans or debentures more than Rs. 50 crores.

The nomination and remuneration committee will consist of a minimum of 3 directors and independent directors will form the majority.

Annual general meeting.— (1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next: Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year: Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation: Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

- (2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate: Provided that the Central Government may exempt any company from the provisions of this subsection subject to such conditions as it may impose. Explanation.—For the purposes of this sub-section, —National Holiday means and includes a day declared as National Holiday by the Central Government.
97. Power of Tribunal to call annual general meeting.—(1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient: Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. (2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.
98. Power of Tribunal to call meetings of members, etc.—(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting,— (a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
- (b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company: Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

- (c) Punishment for default in complying with provisions of sections 96 to 98.—If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Calling of extraordinary general meeting.—(1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company. (2) The Board shall, at the requisition made by,— (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting; (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company within the period specified in sub-section (4). (3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. (4) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. (5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board. (6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

Notice of meeting.—(1) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed: Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent of the members entitled to vote at such meeting. (2) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting. (3) The notice of every meeting of the company shall be given to— (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member; (b) the auditor or auditors of the company; and (c) every director of the company. (4) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

Statement to be annexed to notice.—(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:— (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of— (i) every director and the manager, if any; (ii) every other key managerial personnel; and (iii) relatives of the persons mentioned in sub-clauses (i) and (ii); (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. (2) For the purposes of sub-section (1),— (a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than— (i) the consideration of financial statements and the reports of the Board of Directors and auditors; (ii) the declaration of any dividend; (iii) the appointment of directors in place of those retiring; (iv) the appointment of, and the fixing of the remuneration of, the auditors; and (b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the

extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement. (3) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement under subsection (1). (4) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (1), being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him. (5) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

Quorum for meetings.—(1) Unless the articles of the company provide for a larger number,— (a) in case of a public company,— (i) five members personally present if the number of members as on the date of meeting is not more than one thousand; (ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand; (iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand; (b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company. (2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company— (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or (b) the meeting, if called by requisitionists under section 100, shall stand cancelled: Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or

by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. (3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Chairman of meetings.—(1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands. (2) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands under sub-section (1) shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

Proxies.— (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf: Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll: Provided further that, unless the articles of a company otherwise provide, this subsection shall not apply in the case of a company not having a share capital: Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy: Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed. (2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. (3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(3) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document

necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit. (5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees: Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) The instrument appointing a proxy shall— (a) be in writing; and (b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it. (7) An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company. (8) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

Restriction on voting rights.—(1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

(3) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground. (3) On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

(4) Voting by show of hands.—

(1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands. (2) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Voting through electronic means.—The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

CORPORATE SOCIAL RESPONSIBILITY

The concept of CSR rests on the good corporate citizenship where corporate contributions to the societal growth as a part of their corporate responsibility for utilizing the resources of the society for their productive use.

Ministry of Corporate Affairs has recently notified Section 135 and Schedule VII of the Companies Act as well as the provisions of (CRS Rules) which has come into effect from 1 April 2014.

Applicability

Section 135 of the Companies Act provides the threshold limit for applicability of the CSR to a Company:

- Net worth of the company to be Rs 500 crore or more;
- Turnover of the company to be Rs 1000 crore or more;
- Net profit of the company to be Rs 5 crore or more.

Further, as per the CSR Rules, the provisions of CSR are not only applicable to Indian companies but also applicable to branch offices of a foreign company in India.

CSR Committee and Policy

Every company as prescribed in Section 135 of the Act and Company (Corporate Responsibility) Rules, 2014 within the threshold limit requires spending of at least 2% of its average net profit for the immediately preceding 3 financial years on CSR activities.

Further, the company will be required to constitute a committee (CSR Committee) of the Board of Directors (Board) consisting of 3 or more directors.

The CSR Committee shall formulate and recommend to the Board, a policy which shall indicate the activities to be undertaken (CSR Policy); recommend the amount of expenditure to be incurred on the activities referred and monitor the CSR Policy of the company. The Board shall take into account the recommendations made by the CSR Committee and approve the CSR Policy of the company.

The new CSR regime is based on “Comply or explain” approach to stringently push big corporate giants to take initiative towards their duty to contribute towards their CSR activities. Companies failing to do so would be required to explain why they have not included such information, in the annual report as under Section 92 of the Companies Act, 2013 as part of “comply or explain” approach for large companies.

CORPORATE GOVERNANCE IN INDIA

Corporate Governance is the new golden term coined in the corporate sector in the late 1990's by the Industry Association on Confederation of Indian Institute which was the first initiative in India as a voluntary measure to be adopted by Indian companies. It has outlined a series of voluntary recommendations to integrate best-in-class practices of corporate governance in listed companies which touches the four cornerstones of fairness, transparency, accountability and responsibility in managing the affairs of the company. The second major initiative was taken by Security Exchange of India (SEBI) as Clause 49 of the Listing Agreement. The third key initiative to effectively introduce Corporate Governance was taken by Naresh Chandra Committee and Narayana Murthy Committee who previewed Corporate Governance model working in companies from the viewpoint of shareholders, investors and other stakeholders of the company. Corporate governance guidelines both mandated and voluntary have evolved since 1998, due to the sincere efforts of several committees appointed by the Ministry of Corporate Affairs (MCA) and the SEBI. The real change in the corporate sector could be felt with the introduction of 2009 Mandatory Corporate Governance Voluntary Guidelines which has to be complied by companies listed on stock exchange by Clause 49 of Listing Agreement including mandatory codes to be followed by companies pertaining to board of directors, audit

committees and various disclosures with respect to related party transactions, whistle blower policies etc. Corporate Governance practices in the effective management of the company can be seen as introduction to new significant provisions introduced in the Companies Act, 2013 in form of independent directors, women directors on the board, corporate social responsibility and mandatory compliance of Secretarial Standards issued by Institute of Company Secretaries of India as per Section 118 of Companies Act, 2013.

MEANING AND DEFINITION

Corporate Governance is a multi-faceted subject and difficult to comprehend in a concise definition. The main theme of corporate governance is to integrate sound management policies in the corporate framework in such a manner to bring economic efficiency in the organization in order to achieve twin goals of profit maximization and shareholder welfare.

Need of Corporate governance

Every company should have an ethical corporate governance code as it reduces the risk of fraudulent activities by the top management. Good corporate governance structure enables accountability in the organization and also makes sure that directors, management and employees do not indulge in fraudulent and unlawful activities. The company is responsible for the welfare of the shareholders, management and employees and it is very important to protect their rights. A transparent and ethical corporate governance structure will enhance investor's trust. It will also have an internal control framework which helps in mitigating future risks. Poor corporate governance can always lead to conflict among the shareholders which can always tarnish a company's image. Tarnished image of the company may also lead to dissatisfied and frustrated employees.

Companies Act, 2013 gives a lot of importance to ethical corporate structure by penalizing the officer in default if they do not comply with the same. A director or a KMP can be held liable for unlawful or illegal activities committed by him. It is the duty of the board of directors to have a good corporate governance practice in its company. Independent directors also play a vital role in having effective corporate governance by helping the company formulate policies and representing the shareholders' grievances.

Good Corporate Governance –Corporate solutions

Good corporate governance is embedded to the very existence of a sound company. It is important for the following reasons:

- 1) Corporate governance lays down the foundation of a properly structured Board and strives to a healthy balance between management and ownership which is capable of taking independent decisions for creating long-term trust between the company and external stakeholders of the company.
- 2) It strengthens strategic thinking at the top management by taking independent directors on the board who bring intellectual experience to the company and unbiased approach to deal with matters related to companies' welfare.
- 3) It instils transparent and fair practices in the board management which results in financial transparency and integrity of the audit reports.
- 4) It sets the benchmark for the company's management to comply with laws in true letter and spirit while adhering to ethical standards of the company for bringing out effective management solutions in order to discharge its responsibility for smooth functioning of the company.
- 5) It instils loyalty among investors as their interest is looked after in the best manner by a company who adopts good management practices.

SCOPE OF CORPORATE GOVERNANCE

Corporate governance instils ethical standards in the company. It creates space for open dialogue by incorporating transparency and fair play in strategic operations of the corporate management. The significance of corporate governance lies in:

1. Accountability of Management to shareholders and other stakeholders.
2. Transparency in basic operations of the company and integrity in financial reports produced by the company.
3. Component Board comprising of Executive and Independent Directors.
4. Checks & balances is an integral part of good corporate governance.
5. Adherence to the rules of the company in law and spirit.
6. Code of responsibility for Directors and Employees of the company.
7. Open Dialogue between management and stakeholders of the company.
8. Investor Loyalty is a guarantor of good corporate governance practices.

A Component board comprising of experienced professionals and active directorship who brings rich experience and intellectual vision on the board resulting in a greater economic efficiency of the company and enjoys the indispensable trust of the shareholders and key stakeholders of the company and they turn into trusted market players in the corporate sector enjoying everlasting market repute.

MARKET PLAYERS INCORPORATE GOVERNANCE

The Corporate management decisions have an impact on various people and entities associated with the company who are collectively known as stakeholders which include shareholders, directors, creditors, employees, suppliers, government agencies and society at large. But there are only key stakeholders like shareholders, directors, officers who are active participants in corporate governance process and other stakeholders who themselves are not involved in corporate governance practices but rather are recipients of benefits derived from companies having good corporate governance practices.

CORE PRINCIPLES OF CORPORATE GOVERNANCE

Transparency

The stakeholders should be informed about the company's activities, financial statements, and the organization's performance and also at the same time it is very important to give accurate and precise information to the shareholders. Poor transparency reduces the ability to raise more capital as the investors will be unaware of vital information. It also leads to less trust among the investors as a company that is financially stable and doing well will not have anything to hide. Moreover, companies that are doing well will like to make the financial statements public to promote themselves. Transparency in financial reporting increases the confidence of the shareholders will help them. The policies must be formulated in a manner which ensures transparency. It should also be maintained between directors and employees. The directors should be easily accessible by the employees and directors should be open to ideas of the management and employees. This makes employees more committed to the vision of the company. Lack of transparency will always lead to confusion and it will hinder the productivity of the management and employees.

Accountability

To achieve the goals and objectives of the company, people should be held accountable at all levels. Employees should be accountable to the management; management should be accountable to the board of directors and the board of directors should be accountable to investors and shareholders. Employees, management staff and directors will learn from the mistakes if they are made accountable and it leads to better utilization of the available resources. In this way the organization will grow faster as the scope for mistakes will reduce considerably. It is the duty of directors to encourage accountability in the organization.

Responsibility

The directors of the company are primarily responsible to the shareholders, employees and the whole society. The directors of the company should work in the best interests of the company and its employees. It is the duty of the directors to determine the responsibility of the management and employees. Also, management and employees should be held accountable to make sure that responsibilities are carried out properly. Shareholders want directors to be responsible to their needs and maximize the value of the firm.

Fairness

Fairness principle not only enhances corporate value but it also leads to efficiency in resource allocation. All shareholders and investors should receive equal treatment by the company and the directors should try to prevent conflict of interests. It is very important to ensure fairness in transactions which are entered by the company. For e.g. a company should not enter into related party transactions without getting the approval of the shareholder. Effective communication mechanisms should be adopted by the company to make sure policies and financial statements are informed to the shareholders.

Shareholder Engagement

Shareholders should not be kept in the dark and must be informed of the financial position and organizational objectives. Minority and majority shareholders should be treated equally. All transactions must be avoided which might lead to conflicts with the shareholders.

Leadership

Board of directors is the brain of any company and it is under their leadership and guidance that any company expands and prospers. The directors should be committed to fulfilling the vision and mission of the company which is mentioned in the constitution documents. Leadership also includes motivating the employees so that they reach the maximum potential. It also includes effective decision making and capitalize on opportunities to benefit the firm. Poor leadership by the board can create problems for the company and which may eventually end in bankruptcy or shutting down.

It is essential that good governance practices must be effectively implemented and enforced preferably by self-regulation and voluntary adoption of ethical code of business conduct and if necessary through relevant regulatory laws and rules framed by Government or its agencies such as SFBI, RBI.

The effective implementation of good governance practices would ensure investors' confidence in the corporate companies which will lead to greater investment in them ensuring their sustained growth. Thus good corporate governance would greatly benefit the companies enabling them to thrive and prosper.

Further, in the context of liberalization and globalization there is growing realization in the emerging economies including India that a country's business environment must be maintained and operated in a manner that is conducive to investors' confidence so that both domestic and foreign investors are induced to make adequate investment in corporate companies. This will be conducive to rapid capital formation and sustained growth of the economy.

Some persons regard certain good corporate practices as irritants to the growth of their businesses since they require the implementation of minimum standards of corporate governance. However, fact of the matter is that the observance of practices of good corporate governance will ensure investors' confidence in the companies which have record of good corporate governance.

UNIT III

Foreign Exchange Management Regulation Act 1999, Objectives and definitions under FEMA – Dealings in foreign exchange – holding of foreign exchange etc., current account transactions, capital account transactions – export of goods and service realization and repatriation of foreign exchange – Exemptions authorized person – penalties and enforcement – Compounding of offences – Directorate of enforcement –Appellate Tribunal etc.

UNIT-III

FOREIGN EXCHANGE MANAGEMENT ACT 1999

The Foreign Exchange Regulation Act (FERA) is the legislation that was passed by the Indian Parliament in 1973 and came into effect on January 1, 1974.

FERA was an act to regulate dealings in foreign exchange and foreign securities with the objective of conservation of foreign exchange resources of India and its proper utilization in the economic development of India. It extended to the whole of India and is applicable to all the citizens of India, outside India as well as in India and to branches and agencies of Indian companies or body corporates, outside India.

FERA imposed strict regulations on transactions involving foreign exchange and controlled the import and export of currency. Unlike other laws where everything is permitted unless specifically prohibited, under FERA nothing is permitted unless specifically permitted. Hence the tenor and tone of the Act was very drastic. It provided for imprisonment for violation of even a very minor offense. Under this act, a person was presumed guilty unless he proved himself innocent whereas under other laws, a person is presumed innocent unless he is proven guilty. Therefore one had to be very careful while dealing in foreign exchange and ensure that all legal compliances were carried out.

Eventually the government realized that FERA rules were perhaps a hindrance to economic liberalization. A draft of the Foreign Exchange Management Bill (FEMA) was prepared by the Government of India to replace FERA keeping in view the liberal spirit of the Indian economy. However, until FEMA was enacted, the provisions of FERA were applicable.

FERA was finally repealed by the government in 1999 by the Foreign Exchange Management Act (FEMA), which liberalized foreign exchange controls and removed many restrictions on foreign investment.

The need for replacing FERA with FEMA was felt with the introduction of economic reforms in the country, there was a need to remove the drastic and rigorous measures of FERA and replace it with a set of liberal foreign exchange management regulations.

FEMA came into existence on June 1, 2000 but FERA was provided a sunset clause of two years to enable the Enforcement Directorate (ED) to complete investigations into cases already detected by it for FERA violations before May 31, 2000.

SIMILARITIES & DIFFERENCES

The similarities between FERA and FEMA are as follows:

- The Reserve Bank of India and Central Government continued to be the regulatory bodies
- Presumption of extra territorial jurisdiction as conceived in FERA was retained
- The Directorate of Enforcement continued to be the agency for enforcement of the provisions of the law such as conduct of search and seizure.

DIFFERENCES BETWEEN FERA AND FEMA

DIFFERENCES	FERA	FEMA
PROVISIONS	FERA Consisted of 81 sections, and was more complex	FEMA is much simple, and consist of only 49 sections.
FEATURES	Presumption of negative intention (Mens Rea) and joining hands in offence (abatement) existed in FERA	These presumptions of Mens Rea and abatement have been excluded in FEMA

NEW TERMS IN FEMA	Terms like Capital Account Transaction, Current Account Transaction, Person, Service etc. were not defined in FERA.	Terms like Capital Account Transaction, Current Account Transaction Person, Service etc., have been defined in detail in FEMA
DEFINITION OF AUTHORIZED PERSON	Definition of "Authorized Person" in FERA was an arrow one(2(b))	The definition of "Authorized Person" has been widened to include banks, money changers, off shore banking units etc.(2(c))
MEANING OF "RESIDENT" AS COMPARED WITH INCOME TAX ACT.	There was a big difference in the definition of "Resident", under FERA, and Income Tax Act	The provision of FEMA, are consistent within Tax Act, in respect to the definition of the term "Resident". Now the criteria of "In India for 182 days" to make a person resident has been brought under FEMA. Therefore a person who qualifies to be a non-resident under the Income Tax Act, 1961 will also be considered a non-resident for the purposes of application of FEMA, but a person who is considered to be non-resident under FEMA may not necessarily be a non-resident under the Income Tax Act.

DIRECTORATE OF DISTANCE AND CONTINUING EDUCATION
Manonmaniam Sundaranar University

PUNISHMENT	Any offence under FERA was a criminal offence, punishable with imprisonment as per code of criminal procedure, 1973	Here, the offence is considered to be a civil offence only punishable with some amount of money as a penalty. Imprisonment is prescribed Only when one fails to pay the penalty
QUANTUM OF PENALTY	The monetary penalty payable under FERA, was nearly the five times the Amount involved.	Under FEMA the quantum of penalty has been considerably decreased to three times the Amount involved.
APPEAL	An appeal against the order of "Adjudicating office", before "Foreign Exchange Regulation Appellate Board went before High Court	The appeals against the order of Adjudicating Authority and Special Director are passed over to the Appellate Tribunal and then later onto High Court.
RIGHT OF ASSISTANCE DURING LEGAL PROCEEDINGS	FERA did not contain any express provision on the defaulter to seek any legal assistance	FEMA expressly recognizes the right of appellant to take assistance of legal practitioner or chartered accountant
POWER OF SEARCH AND SEIZE	FERA conferred wide powers on a police officer not below the rank of a Deputy Superintendent of Police to make a search	The scope and power of search and seizure has been curtailed to a great extent and have been confined to officers of Enforcement

COMPOUNDING OF OFFENCES	FERA did not permit such compounding	FEMA permits compounding of offences
TRANSACTIONS	All foreign exchange dealings required permission from RBI or Central Government	FEMA made current account transactions free from permissions and certain Capital Account transactions required special permission from RBI.

When a business enterprise imports goods from other countries, exports its products to them or makes investments abroad, it deals in foreign exchange.

Foreign exchange means 'foreign currency' and includes deposits, credits and balances payable in any foreign currency; drafts, travellers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency; and drafts, travellers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency. The management of foreign exchange is very important in the present day business.

FEMA facilitates external trade and payments and promotes the orderly development and maintenance of foreign exchange market. The Act has assigned an important role to the Reserve Bank of India (RBI) in the administration of FEMA. The rules, regulations and norms pertaining to several sections of the Act are laid down by the Reserve Bank of India, in consultation with the Central Government.

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

FEMA came into effect on the 1st of June, 2000, replacing the Foreign Exchange Regulation Act (FERA). The intentions of the Foreign Exchange Management Act are to perhaps, revise and unite laws that relate to transactions of foreign exchange and encourage an orderly maintenance and development, of the foreign exchange markets in India. FEMA is not as restrictive as some of the FERA regulations, and in line with India's economic liberalization policies.

FEMA

- consolidate and amend the law relating to foreign exchange
- facilitating external trade and payments
- promoting the orderly development and maintenance of foreign exchange market in India
- 49 sections (with subsections) divided into 7 chapters in the Act

HIGHLIGHTS OF FEMA 1999

1. FEMA is transparent in its applicability. Only capital account transactions are regulated by RBI. While current account transactions under FEMA are permissiblefreely subject to certain restrictions. The exceptions for current account transactionsinclude:

- Remittance out of lottery winnings.
- Remittance of income from racing/riding etc. or any other hobby
- Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, and sweeps takes, etc.
- Payment of commission on exports made towards equity investment in joint ventures/wholly owned subsidiaries abroad of Indian companies.
- Remittance of dividend by any company to which the requirement of dividendbalancing is applicable.
- Payment related to ‘call back services’ of telephones.
- Remittance of interest income on funds held in non-resident account.

2. Certain current account transactions need permission of appropriate Government authority irrespective of the amount. While other transactions would require RBI permission, if they exceed a certain ceiling.

DEFINITION AND CONCEPTS

Adjudicating Authority [Section 2(A)]

According to clause (a) of Section 2 ‘Adjudicating Authority’ means an officer authorized for the purposes of adjudication in respect of penalties under Section 13. Section 16 empowers the Central Government, to appoint, by an order published in the Official Gazette, as many officers as it may think fit as the adjudicating authorities for holding an enquiry in the manner prescribed after giving the person alleged to have committed any contravention, an opportunity of being heard.

Appellate Tribunal [Section 2 (B)]

‘Appellate Tribunal’ means Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the adjudicating authorities and Special Directors (Appeals) under the Act.

Authorized Person Sec 2(C)

1. RBI cannot do all transactions in foreign exchange by itself. Therefore, the powers are delegated to authorized persons with suitable guidelines, to deal in foreign exchange and foreign securities.
2. Sec.3 of FEMA 1999 require all dealing in FE through Authorized Person only.
3. Sec 2 (c) of FEMA 1999 define Authorized Person means an Authorized Dealer, Money Changer , Offshore Banking Unit or any other person authorized under sub- section 1 of section 10 (written as u/s 10(1)) to deal in Foreign Exchange or Foreign Securities.
4. Under Sec 10(1) of FEMA 1999 empowers RBI to authorize person to deal in Foreign Exchange or Foreign Securities.

AUTHORIZED PERSONS CAN BE BROADLY CATEGORIZED IN THE FOLLOWING CATEGORIES:

AUTHORISED DEALERS:

- a) Category I:

e.g. commercial banks, State Co-op Banks, Urban Co-op Banks

- b) Category II: Upgraded FFMC with a minimum net owned funds of INR 10 crore and functioning for last 2 years. Regional Rural Banks (RRBs) can undertake non trade related current a/c transactions

- c) Category III: Transactions incidental to the foreign exchange activities undertaken by select financial institutions and other institutions authorized dealers

Authorized Money Changers (AMCs) are entities, authorized by the Reserve Bank under Section 10 of the Foreign Exchange Management Act, 1999. An AMC is a Full-Fledged Money Changer (FFMC) authorized by the Reserve Bank to deal in foreign exchange for specified purposes. They are authorized to issue and encash foreign currency travelers' cheques and currency notes.

DUTIES OF AN AUTHORIZED PERSON/ RESPONSIBILITY OF AUTHORIZED DEALERS MAINTAINING FOREIGN CURRENCY ACCOUNTS

1. To comply with directions issued by RBI from time to time [Sec 10(4)]
2. Submit periodic return or statement, if any, as may be stipulated by the Reserve Bank
3. To make declaration [Sec 10(5)]
4. To produce books of accounts and documents [Sec 12(2)]

CAPITAL ACCOUNT TRANSACTIONS SEC 2 (E)

'Capital account transaction' has been defined to mean any transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India and includes the transactions specified in Sub-section (3) of Section 6 of the Act.

CURRENCY NOTES [SECTION 2(I)]

'Currency Notes' includes cash in the form of coins and bank notes. In fact, it means money and such bank notes or other paper money as are authorized by law and circulate from hand to hand as a medium of exchange.

CURRENT ACCOUNT TRANSACTIONS SEC 2(J)

The term current account transaction has been defined to mean a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments; remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children. Under the Act freedom has been granted for selling and drawing of foreign exchange to or from an authorized person for undertaking current account transactions. However, the Central Government has been vested with powers in consultation with Reserve Bank to impose reasonable restrictions on current account transactions.

FOREIGN EXCHANGE SEC 2 (N)

The term 'foreign exchange has been defined to mean foreign currency and includes deposits, credits, balance payable in foreign currency, drafts, travelers' cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency. Any draft, travelers' cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency has also been included in the definition of foreign exchange.

PERSON [SECTION 2(U)]

The definition of the term 'person includes, an individual, a Hindu Undivided Family, a company, a firm, an association of persons or body of individuals whether incorporated or not; any agency, office or branch owned or controlled by such persons. Even every artificial juridical person* not falling within the above definition has been treated as person as per clause (u) of Section 2. *A juridical person is a legal entity created by the law which is not a natural person, such as a corporation.

PERSON RESIDENT IN INDIA [SECTION 2(V)]

The residential status of a person is determined to check the flow of foreign

exchange between persons enjoying different residential status. A person cannot transfer/transmit more than a limit specified in the Foreign Exchange Management Act (FEMA), 1999 for different purposes.

As per Section 2(v) of FEMA, 1999 Person Resident in India includes:

1. A person residing in India for more than 182 days during the course of the preceding financial year but does not include following two categories of persons from the purview of definition.
 - a. A person who has gone out of India or who stays outside India, either case-
 - For or on taking up employment outside India, or
 - For carrying on outside India a business or vocation outside India, or
 - for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.
 - b. A person who has come to or stays in India, in either case, otherwise than-
 - for or on taking up employment in India, or
 - for carrying on in India a business or vocation in India, or
 - for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
2. Any person or body corporate registered or incorporated in India.
3. An office, branch or agency in India owned or controlled by a person resident outside India.
4. An office, branch or agency outside India owned or controlled by a person resident in India.

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE DEALING IN FOREIGN EXCHANGE SECTION 3

No person shall engage in the under specified actions unless given special sanction from RBI:

- a) deal in or transfer any foreign exchange or foreign security or any person not being an authorized person;
- b) make any payment to or for the credit of any person
- c) resident outside India in any manner;
- d) receive otherwise through an authorized person, any payment by order or on behalf

of any person resident outside India in any manner

e) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

HOLDING OF FOREIGN EXCHANGE SECTION 4

No person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Sub-section (4) allows a person resident in India to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Similarly, a person resident outside India is permitted to hold, own, transfer or invest in Indian currency, security, or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

CURRENT AND CAPITAL ACCOUNT TRANSACTIONS SECTION 5,6

Section 5 of the Act allows any person to sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction as defined under Section 2(j) of the Act. However, the Central Government may, in the public interest and in consultation with the Reserve Bank impose reasonable restrictions for current account transactions.

Foreign Exchange Management (Current Account Transactions) Rules, 2000 defines the term 'Drawal as to mean drawal of foreign exchange from an authorized person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM Card or any other thing by whatever name called which has the effect of creating foreign exchange liability.'

Section 6 allows capital account transactions subject however to certain conditions. This section empowers the Reserve Bank of India to specify, in consultation with the Central Government, any class or classes of capital account

transactions permissible and the limit upto which foreign exchange shall be admissible for such transactions.

Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following:

- (a) transfer or issue of any foreign security by a person resident in India.
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred—
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.

RBI has also been empowered to prohibit or regulate giving of guarantee or surety in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India or by a person resident outside India.

Reserve Bank of India under Sub-section (6) has been empowered to regulate, prohibit, restrict establishment in India of a branch, office or other place of business by a person resident outside India for carrying on any activity relating to such branch, office or other place of business.

EXPORT OF GOODS AND SERVICES SECTION 7

1) Every exporter of goods shall-

- i) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;
- ii) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realization of the export proceeds by such exporter.

(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services. Section 8 of the Act requires the person resident in India to make all reasonable efforts to realise and repatriate the foreign exchange dues as per the directions of the Reserve Bank. Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take reasonable steps to realize and repatriate to India such foreign exchange within stipulated time and manner as may be specified by the Reserve Bank. It requires a person resident in India to whom any foreign exchange is due or has accrued, to take all reasonable steps to realize and repatriate to India such foreign exchange unless an exemption has been granted under the Act and rules made there under the general or special

permission of Reserve Bank.

Regulation 3 also requires a person resident in India, to refrain from doing anything/taking any action, resulting in delay in receipt of foreign exchange in whole or part, or ceasing in whole or part the foreign exchange receivable by him. Example: If A Ltd. sold goods to Mr. X, a person resident outside India and later Mr. X refused to make such payment and was untraceable. Now, this will be the duty of A Ltd. to take all reasonable steps to recover the amount from Mr. X or otherwise report the matter to RBI.

Section 9 contains exemptions from the application of provisions relating to holding of foreign currency and realization and repatriation in certain circumstances, as provided under Sections 4 and 8 of the Act respectively.

- (a) Possession of foreign currency or foreign coins by any person up to such limit as the RBI may specify;
- (b) Foreign currency account held by such person or class of persons and the limit up to which the Reserve Bank may specify;
- (c) Foreign exchange acquired or received before the 8th of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;
- (d) Foreign exchange held by a person who is resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or in heritage from a person referred to in clause (C), including any income arising therefrom;
- (e) Foreign exchange acquired from employment, business, trade, vacation, services or any other legitimate means up to such limit as the Reserve Bank may specify;
- (f) Such other receipts as the Reserve Bank may specify.

The Reserve Bank of India (RBI), the nodal body for managing foreign exchange, has prescribed limits up to which a resident individual can remit or spend foreign exchange freely i.e. without any approval requirement.

- Holiday in abroad: An individual is allowed to draw foreign exchange upto\$10,000 in a year for one or more private visits abroad.
- Business trip: One can apply to the bank for release of foreign exchange upto \$25,000.
 - Employment: RBI has allowed drawing foreign exchange upto \$100,000 for taking up employment abroad.
 - Education: Student can draw up to \$100,000 equivalent per academic year for studying abroad
- Medical treatment: An individual willing to travel abroad forgetting medical treatment is allowed to withdraw foreign exchange up to \$100,000 based on self-declaration of essential details without providing any estimate from a doctor or hospital.

AUTHORISED PERSON

Sections 10-12 of Chapter III of the Act deals with the provisions relating to authorized person. Section 10 deals with the procedure of appointing authorized person by the Reserve Bank, Section 11 specifies the powers of the RBI to issue directions to authorized person and Section12 prescribes the power of the RBI to inspect authorized person.

Under Section10, any person who has made an application to the RBI may be authorized by it to act as an authorized person to deal in foreign exchange or in foreign securities as an authorized dealer, money changer or offshore banking unit or in any other manner as the RBI deem fit. This authorization is in writing and subject to the conditions laid down by the RBI.

Normally, nationalized banks, leading non nationalized banks and foreign banks are appointed as authorized persons.

Authorized persons are required to comply with the directions of the Reserve Bank with regard to his dealing in foreign exchange or foreign security receipt with the previous permission of the Reserve Bank. However authorized person is required not to engage in any transaction involving any foreign exchange or foreign

security which is not in conformity with the terms of his authorization.

Reserve Bank of India has been empowered to revoke the authorization granted to any person at any time in the public interest. It may also revoke the authorization after giving an opportunity, if the authorized person failed to comply with the conditions subject to which the authorization was granted or contravened any of the provisions of the Act, rules, notifications or directions.

An authorized person, before undertaking any transaction on behalf of any person shall, require that person to make such declaration and give such information as will reasonably satisfy the authorized person that the transaction will not involve or is not intended to violate or contravene any provisions of the Act, rules, notification or directions

In case, the person refuses to comply with such requirements or makes only unsatisfactory compliances, the authorized person is duty bound to refuse in writing to act on behalf of such person in such transaction and report the matter to Reserve Bank. Any person, other than an authorized person who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to the authorized person does not use it for such purpose, or does not surrender it to authorized person within the specified period, or uses the foreign exchange for any other purpose, which is not permitted under the provisions of the Act, such person shall be deemed to have committed contravention of the provisions of the Act.

POWER OF THE RESERVE BANK TO ISSUE DIRECTIONS TO AUTHORISED PERSON

Section 11 of the Act empowers the RBI to issue directions to the authorized person in regard to making of payment relating to foreign exchange or foreign security. Reserve Bank has also been empowered to issue directions to the authorized persons to furnish such information in such manner as it deems fit.

If any authorized person contravenes any direction given by the RBI or fails to file the return as directed by RBI, he may be liable to a fine not exceeding INR 10,000/- and in the case of continuing contravention, with an additional penalty which may extend to INR 2,000 for every day during which such contravention

continues.

POWER OF RESERVE BANK TO INSPECT AUTHORISED PERSON

Section 12 of the Act empowers RBI to inspect the business of any authorized person for the purpose of verifying the correctness of any statement furnished.

In case authorized person fails to furnish the information sought, the RBI can initiate inspection of the authorized person for obtaining such information. RBI may also inspect the business of an authorized person for securing compliance with the provisions of the Foreign Exchange Management Act or any of the Rules, Regulations or directions.

The Reserve Bank may make an order in writing authorizing any of its officer for this purpose. When an inspection is initiated by the Reserve Bank, it shall be the duty of every authorized person (where the authorized person is a company or firm, every director partner or officer of such a company or firm), to produce before the inspecting officer, such books, accounts and other documents in his custody and to furnish any statement or information relating to the affairs of such authorized person within the time limit and the manner in which such inspecting officer may direct.

Sections 13 to 15 of Chapter IV of the Act deals with contravention and penalties. Section 13 deals with penalties, Section 14 provides for enforcement of the orders of Adjudicating Authority and Section 15 deals with compounding of contraventions.

Penalties [Section 13(1)]

A person failing or contravening the provisions of RBI shall be imposed a penalty up to thrice the sum involved in such contravention where such amount is quantifiable or up to INR 2 lakhs where the amount is not quantifiable.

If contravention is of continuing nature, further penalty up to INR 5000 per day during which the contravention continues can be imposed.

The adjudicating authority handling the matter may impose additional penalty over and above existing penalty by confiscating currency, security or property involved.

Confiscation of Money or Property [Section 13 (2)]

- In case the Adjudicating Authority finds contravention to Section 13 in connection with any currency or security or any other money or property, then that currency, security or any other money or property on which the contravention has taken place, shall be confiscated by the Central Government.
- The adjudging authority may direct the defaulting person that such property shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Enforcement of the Orders of Adjudicating Authority [Section14]

- If any person fails to make full payment of the penalty imposed on him under section13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.
- However, no order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the specified date and to show cause why he should not be detained in the civil prison.

Obstruction in recovery of Penalty:

1. The defaulter shall be arrested-
 - (a) if he has obstructed the recovery of penalty, or dishonestly transferred, concealed, or removed any part of his property;
 - (b) if he has or has had means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.
2. Intend to Abscond:

A warrant for the arrest of the defaulter may be issued if the Adjudicating Authority is satisfied that the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.

3. Non-Compliance of Served Notice:

Where appearance is not made pursuant to a notice issued and served, the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

4. Presenting Arrested Person before the Authority:

Every person arrested in pursuance of a warrant of arrest shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest. But, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

5. Opportunity of being heard:

When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority, the Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.

6. Detention in the Custody:

The defaulter has to be detained in the custody till the conclusion of inquiry is pending under the officer as per direction of Adjudicating Authority.

However, such defaulter may be released on furnishing the security amount to him but on the satisfaction of the Adjudicating Authority that such person shall appear as and when required. Upon the conclusion of inquiry, defaulter will be released by giving an opportunity to satisfy the arrears of penalty for a period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period.

7. Release of the defaulter:

When the Adjudicating Authority does not make an order of detention, he shall, if the defaulter is under arrest, direct his release.

8. Execution of Certificate:

Every person detained in the civil prison in execution of the certificate may be so detained,—

- where the certificate is for a demand of an amount exceeding rupees one crore , up to three years, and
- in any other case, up to six months: Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.

9. Release does not amount to Discharge of Liability:

A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.

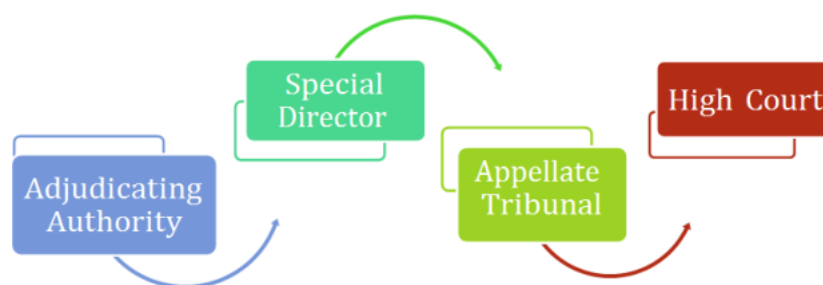
10. Power to Compound Contravention:

Any contravention may be compounded with 180 days from the date of receipt of application by the Director of Enforcement or other authorised officers by the Central Government. No proceeding shall be initiated or continued, as the case may be, against committing such contravention under that section, in respect of the contravention so compounded.

COMPOUNDING OF CONTRAVENTIONS SEC 15

Compounding of contraventions may take place within 180 days from the receipt of application by the Enforcement Director or officers of Enforcement Directorate and RBI. Separate proceedings need not be initiated in case of compounding offences. Exceptions to compounding may arise if in case the amount is non quantifiable, appeal has been filed, act of contravention has been repeated within a span of 3 years or if fee has been deposited with the authority within 15 days from the date of order.

ADJUDICATING AUTHORITY



Appointment of Adjudicating Authority

For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding

an inquiry in the manner prescribed after giving a reasonable opportunity of being heard to the person alleged to have committed contravention under section 13 for the purpose of imposing any penalty.

Filing of Complaint and Holding an Enquiry

No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorized by a general or special order by the Central Government.

Right to take Legal Assistance

The said person, who has contravened the provisions of the act, may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

Powers

Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28.

Time Limit to dispose of a complaint

Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavor shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint.

SPECIAL DIRECTOR

Appeal to Special Director

The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities. The Special Director shall have the same powers of a civil court and all proceedings before him shall be deemed to be judicial proceedings.

Time Limit to file an appeal

Every appeal under sub-section (1) shall be filed within 45 days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person. However, the Special Director may entertain an appeal after the expiry of the said period of 45 days, if he is satisfied that there was sufficient cause for not filing it within that period.

Adjudication of Appeal

On receipt of an appeal, the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against. The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority.

Establishment

The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the special Director (Appeals) under this Act.

Appeal to Appellate Tribunal

Any party aggrieved by an order made by an Adjudicating Authority or the Special Directors may file an appeal to the Appellate Tribunal within a period of 45 days from the date of receipt of order.

Adjudication of Appeal

On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

Time Limit of Adjudication

The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously to dispose of the appeal finally within 180 days from the date of receipt of the appeal. Provided that where any appeal could not be disposed of within the said period, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period.

Any person aggrieved with the decision of Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Tribunal on any question of law arising out of such order.

UNIT IV

Environmental Legislation Legal and regulatory frame work – procedures for obtaining various environment clearances – role and function of Environment Tribunal / Authority – Appearance before Environment Tribunal / Authority – Environment Audit.

ENVIRONMENTAL LEGISLATION LEGAL AND REGULATORY FRAMEWORK

Over the years, together with a spreading of environmental consciousness, there has been a change in the traditionally-held perception that there is a trade-off between environmental quality and economic growth as people have come to believe that the two are necessarily complementary. The current focus on environment is not new—environmental considerations have been an integral part of the Indian culture. The need for conservation and sustainable use of natural resources has been expressed in Indian scriptures, more than three thousand years old and is reflected in the constitutional, legislative and policy framework as also in the international commitments of the country.

Even before India's independence in 1947, several environmental legislation existed but the real impetus for bringing about a well-developed framework came only after the UN Conference on the Human Environment (Stockholm, 1972). Under the influence of this declaration, the National Council for Environmental Policy and Planning within the Department of Science and Technology was set up in 1972. This Council later evolved into a full-fledged Ministry of Environment and Forests (MoEF) in 1985 which today is the apex administrative body in the country for regulating and ensuring environmental protection. After the Stockholm Conference, in 1976, constitutional sanction was given to environmental concerns through the 42nd Amendment, which incorporated them into the Directive Principles of State Policy and Fundamental Rights and Duties.

Since the 1970s an extensive network of environmental legislation has grown in the country. The MoEF and the pollution control boards (CPCB i.e. Central Pollution Control Board and SPCBs i.e. State Pollution Control Boards) together form the regulatory and administrative core of the sector.

A policy framework has also been developed to complement the legislative provisions. The Policy Statement for Abatement of Pollution and the National Conservation Strategy and Policy Statement on Environment and Development were brought out by the MoEF in 1992, to develop and promote initiatives for the protection and improvement of the environment. The EAP

(Environmental Action Programme) was formulated in 1993 with the objective of improving environmental services and integrating environmental considerations into development programmes.

Other measures have also been taken by the government to protect and preserve the environment. Several sector-specific policies have evolved.

The main environmental laws, under which various key environmental permits (or consents) are being issued in India, include the:

Water (Prevention and Control of Pollution) Act 1974 (Water Act)

Air (Prevention and Control of Pollution) Act 1981 (Air Act)

Environment (Protection) Act 1986 (EP Act)

Water (Prevention and Control of Pollution) Act 1974 (Water Act)

The main objective of this act is to provide prevention and control of water pollution and maintaining or restoring of wholesomeness and purity of water (in the streams or wells or on land).

Some important provisions of this Act are given below:

- The Act vests regulatory authority in State Pollution Control Boards and empowers these Boards to establish and enforce effluent standards for factories discharging pollutants into water bodies. A Central Pollution Control Board performs the same functions for Union Territories and formulate policies and coordinates activities of different State Boards.
- The State Pollution Control Boards control sewage and industrial effluent discharges by approving, rejecting or imposing conditions while granting consent to discharge.
- The Act grants power to the Board to ensure compliance with the Act by including the power of entry for examination, testing of equipment and other purposes and power to take the sample for the purpose of analysis of water from any stream or well or sample of any sewage or trade effluents.
- Prior to its amendment in 1988, enforcement under the Water Act was achieved through

criminal prosecutions initiated by the Boards, and through applications to magistrates for injunctions to restrain polluters.

The 1988 amendment strengthened the Act's implementation the pollution provisions. Board may close a defaulting industrial plant or withdraw its supply of power or water by an administrative order; the penalties are more stringent, and a citizen's suit provision supports the enforcement machinery.

This Act represented India's first attempts to comprehensively deal with environmental issues. The Act prohibits the discharge of pollutants into water bodies beyond a given standard, and lays down penalties for non-compliance. The Act was amended in 1988 to conform closely to the provisions of the EPA, 1986. It set up the CPCB (Central Pollution Control Board) which lays down standards for the prevention and control of water pollution.

At the State level, the SPCBs (State Pollution Control Board) function under the direction of the CPCB and the state government.

Air (Prevention and Control of Pollution) Act 1981 (Air Act)

To counter the problems associated with air pollution, ambient air quality standards were established, under the 1981 Act. The Act provides means for the control and abatement of air pollution. The Act seeks to combat air pollution by prohibiting the use of polluting fuels and substances, as well as by regulating appliances that give rise to air pollution. Under the Act establishing or operating of any industrial plant in the pollution control area requires consent from state boards. The boards are also expected to test the air in air pollution control areas, inspect pollution control equipment, and manufacturing processes.

National Ambient Air Quality Standards (NAAQS) for major pollutants were notified by the CPCB in April 1994. These are deemed to be levels of air quality necessary with an adequate margin of safety, to protect public health, vegetation and property (CPCB 1995 cited in Gupta, 1999). The NAAQS prescribe specific standards for industrial, residential, rural and other sensitive areas. Industry-specific emission standards have also been developed for iron and steel plants, cement plants, fertilizer plants, oil

refineries and the aluminium industry. The ambient quality standards prescribed in India are similar to those prevailing in many developed and developing countries.

To empower the central and state pollution boards to meet grave emergencies, the Air(Prevention and Control of Pollution) Amendment Act, 1987 was enacted. The boards were authorized to take immediate measures to tackle such emergencies and recover the expenses incurred from the offenders. The power to cancel consent for non-fulfilment of the conditions prescribed has also been emphasized in the Air Act Amendment.

The Air (Prevention and Control of Pollution) Rules formulated in 1982, defined the procedures for conducting meetings of the boards, the powers of the presiding officers, decision-making, the quorum; manner in which the records of the meeting were to be set etc. They also prescribed the manner and the purpose of seeking assistance from specialists and the fee to be paid to them.

Complementing the above Acts is the Atomic Energy Act of 1982, which was introduced to deal with radioactive waste. In 1988, the Motor Vehicles Act, was enacted to regulate vehicular traffic, besides ensuring proper packaging, labelling and transportation of the hazardous wastes. Various aspects of vehicular pollution have also been notified under the EPA of 1986. Mass emission standards were notified in 1990, which were made more stringent in 1996. In 2000 these standards were revised yet again and for the first time separate obligations for vehicle owners, manufacturers and enforcing agencies were stipulated. In addition, fairly stringent Euro I and II emission norms were notified by the Supreme Court on April 29, 1999 for the city of Delhi. The notification made it mandatory for car manufacturers to conform to the Euro I and Euro II norms of May 1999 and April 2000, respectively, for new non-commercial vehicle sold in Delhi.

To implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972, Parliament enacted the nationwide Air Act. The main objectives of this Act are to improve the quality of air and to prevent, control and abate air pollution in the country.

Important provisions of this Act are given below:

The Air Act's framework is similar to that of the Water Act of 1974. To enable an integrated approach to environmental problems, the Air Act expanded the authority of the

central and state boards established under the Water Act, to include air pollution control.

- States not having water pollution boards were required to set up air pollution boards.
- Under the Air Act, all industries operating within designated air pollution control areas must obtain “consent” (permit) from the State Boards.
- The states are required to prescribe emission standards for industry and automobiles after consulting the central board and noting its ambient air quality standards.
- Act granted power to the Board to ensure compliance with the Act including the power of entry for examination, testing of equipment and other purposes and power to take the sample for the purpose of analysis of air or emission from any chimney, fly ash or dust or any other outlet in such a manner as may be prescribed.
- Prior to its amendment in 1987, the Air Act was enforced through mild court administered penalties on violations. The 1987 amendment strengthened the enforcement machinery and introduced stiffer penalties. Now, the boards may close down a defaulting industrial plant or may stop its supply of electricity or water. A board may also apply to the court to restrain emissions that exceed prescribed limits.

Notably, the 1987 amendment introduced a citizen’s suit provision into the Air Act and extended the Act to include noise pollution.

Environment (Protection) Act 1986 (EP Act)

This Act is an umbrella legislation designed to provide a framework for the co-ordination of central and state authorities established under the Water (Prevention and Control) Act, 1974 and Air (Prevention and Control) Act, 1981. Under this Act, the central government is empowered to take measures necessary to protect and improve the quality of the environment by setting standards for emissions and discharges; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare.

From time to time the central government issues notifications under the EPA for the protection of ecologically-sensitive areas or issues guidelines for matters under the EPA.

Some notifications issued under this Act are:

- Doon Valley Notification (1989), which prohibits the setting up of an industry in which the daily consumption of coal/fuel is more than 24 MT (million tonnes) per day in the Doon Valley.

- Coastal Regulation Zone Notification (1991), which regulates activities along coastal stretches. As per this notification, dumping ash or any other waste in the CRZ is prohibited. The thermal power plants (only foreshore facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated waste water/cooling water) require clearance from the MoEF.
- Dhanu Taluka Notification (1991), under which the district of Dhanu Taluka has been declared an ecologically fragile region and setting up power plants in its vicinity is prohibited.
- Revdanda Creek Notification (1989), which prohibits setting up industries in the belt around the Revdanda Creek as per the rules laid down in the notification.
- The Environmental Impact Assessment of Development Projects Notification, (1994 and as amended in 1997).

As per this notification:

- All projects listed under Schedule I require environmental clearance from the MoEF.
- Projects under the delicensed category of the New Industrial Policy also require clearance from the MoEF.
- All developmental projects whether or not under the Schedule I, if located in fragile regions must obtain MoEF clearance.
- Industrial projects with investments above Rs 500 million must obtain MoEF clearance and are further required to obtain a LOI (Letter Of Intent) from the Ministry of Industry, and an NOC (No Objection Certificate) from the SPCB and the State Forest Department if the location involves forestland. Once the NOC is obtained, the LOI is converted into an industrial licence by the state authority.
- The notification also stipulated procedural requirements for the establishment and operation of new power plants. As per this notification, two-stage clearance for site-specific projects such as pithead thermal power plants and valley projects is required. Site clearance is given in the first stage and final environmental clearance in the second. A public hearing has been made mandatory for projects covered by this notification. This is an important step in providing transparency and a greater role to local communities.
- Ash Content Notification (1997), required the use of beneficiated coal with ash content not exceeding 34% with effect from June 2001, (the date later was extended to June 2002). This applies to all thermal plants located beyond one thousand kilometres from

the pithead and any thermal plant located in an urban area or, sensitive area irrespective of the distance from the pithead except any pithead power plant.

- Taj Trapezium Notification (1998), provided that no power plant could be set up within the geographical limit of the Taj Trapezium assigned by the Taj Trapezium Zone Pollution (Prevention and Control) Authority.
- Disposal of Fly Ash Notification (1999), the main objective of which is to conserve the topsoil, protect the environment and prevent the dumping and disposal of fly ash discharged from lignite-based power plants. The salient feature of this notification is that no person within a radius of 50 km from a coal-or lignite-based power plant shall manufacture clay bricks or tiles without mixing at least 25% of ash with soil on a weight-to-weight basis.

For the thermal power plants, the utilization of the fly ash would be as follows:

- Every coal-or lignite-based power plant shall make available ash for at least ten years from the date of publication of the above notification without any payment or any other consideration, for the purpose of manufacturing ash-based products such as cement, concrete blocks, bricks, panels or any other material or for construction of roads, embankments, dams, dykes or for any other construction activity.
- Every coal or lignite based thermal power plant commissioned subject to environmental clearance conditions stipulating the submission of an action plan for full utilization of fly ash shall, within a period of nine years from the publication of this notification, phase out the dumping and disposal of fly ash on land in accordance with the plan.

Wild Life (Protection) Act 1972

The Wild Life Protection Act controls the conservation, and use of protected species. It also empowers the Forest Department to pass regulations that govern the management of endangered flora and fauna. Under this Act “Endangered Species” may not be kept in captivity unless so approved by the Forest Department. All species listed as endangered by CITES are protected in Belize.

In 1972, Parliament enacted the Wild Life Act (Protection) Act. The Wild Life Act provides for state wildlife advisory boards, regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, regulations for trade in wild animals, animal products and trophies, and judicially imposed penalties for violating the Act. Harming endangered species listed in Schedule 1 of the Act is prohibited throughout India.

Hunting species, like those requiring special protection (Schedule II), big game (Schedule III), and small game (Schedule IV), is regulated through licensing. A few species classified as vermin (Schedule V), may be hunted without restrictions. Wild life wardens and their staff administer the act.

An amendment to the Act in 1982, introduced a provision permitting the capture and transportation of wild animals for the scientific management of animal population. India is a signatory to the Convention of International Trade in Endangered Species of Fauna and Flora (CITES, 1976). Under this convention, export or import of endangered species and their products are governed by the conditions and stipulations laid down therein. Indian government has also started some conservation projects for individual endangered species like Hungal (1970), Lion (1972), Tiger (1973), Crocodiles (1974), Brown-antlered Deer (1981) and Elephant (1991-92).

Forest (Conservation) Act 1980

The protection of all mangroves fall under this Act via the Forest (Protection of Mangrove) Regulations. Mangrove clearance may be permitted under this Act. In most cases a permit to clear mangroves is issued after a multi-agency assessment is conducted.

This Act includes the establishment of Forest Reserves which may include mangroves, littoral forests and water bodies. However, no specific regulations exist under this Act that address littoral forests. The Forest Act is currently being revised.

The legislative basis for conservation of national lands within BCNP is defined by the Forest and Wildlife Conservation Acts. The Forest Act provides for the protection and conservation of all mangrove forests on both private and national lands, any alterations to which require evaluation and permit by the Forestry Department.

Public Liability Insurance Act 1991

The Act covers accidents involving hazardous substances and insurance coverage for these. Where death or injury results from an accident, this Act makes the owner liable to provide relief as is specified in the Schedule of the Act. The PLIA was amended in 1992, and the Central Government was authorized to establish the Environmental Relief Fund, for making relief payments.

Biological Diversity Act 2002

The Convention on Biological Diversity (CBD) is a legally binding treaty that has

been ratified until now by 180 countries. The CBD has three main thrust areas: conservation of biodiversity, sustainable use of biological resources and equitable sharing of benefits arising from their sustainable use.

The Convention on Biological Diversity came into force in 1993. Many biodiversity issues are addressed in the convention, including habitat preservation, intellectual property rights, biosafety, and indigenous peoples' rights. These include the promulgation of the Wild Life (Protection) Act of 1972, amended in 1991; and participation in several international conventions such as CITES.

India's richness in biological resources and indigenous knowledge relating to them is well recognized. One of the major challenges is in adopting an instrument which helps to realize the objectives of equitable benefit sharing enshrined in the Convention. Towards this, legislation on biodiversity was developed following an extensive consultative process. The legislation aims at regulating access to biological resources so as to ensure equitable sharing of benefits arising from their use.

The Biological Diversity Bill, which was introduced in the Parliament on 15th May, 2000, was referred to Parliamentary Standing Committee for Science, Technology, Environment and Forests for examination and report. After examination of witnesses and recording evidences, the Standing Committee approved the Bill with some amendments. The Cabinet approved the proposal for moving the official amendments based upon the recommendations of the Committee. The Biological Diversity Bill 2002 has been passed by the Lok Sabha on 2nd December, 2002 and by the Rajya Sabha on 11th December, 2002.

Salient features of the Biodiversity Legislation

The main intent of this legislation is to protect India's rich biodiversity and associated knowledge against their use by foreign individuals and organizations without sharing the benefits arising out of such use, and to check biopiracy. The Act provides for setting up of a National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs) and Biodiversity Management Committees (BMCs) in local bodies. NBA and SBB are required to consult BMCs in decisions relating to use of biological resources or related knowledge within their jurisdiction and BMCs are to promote conservation, sustainable use and documentation of biodiversity.

All foreign nationals or organizations require prior approval of NBA for obtaining

biological resources and associated knowledge for any use. Indian individuals/entities require approval of NBA for transferring results of research with respect to any biological resources to foreign nationals/organizations. Collaborative research projects and exchange of knowledge and resources under these projects are exempted provided they are drawn as per the policy guidelines of the Central Government. However, Indian citizens/entities/local people including vaidas and hakims have free access to use biological resources within the country for their own use, medicinal purposes and research purposes.

While granting approvals, NBA will impose terms and conditions to secure equitable sharing of benefits. Before applying for any form of IPRs (Intellectual Property Rights) in or outside India for an invention based on research or information on a biological resource obtained from India, prior approval of NBA will be required. There is an enabling provision for setting up a framework for protecting traditional knowledge.

The monetary benefits, fees, royalties as a result of approvals by NBA to be deposited in National Biodiversity Fund, which will be used for conservation and development of areas from where resource has been accessed, in consultation with the local self-government concerned. There is provision for notifying National Heritage Sites important from the stand point of biodiversity by State Governments in consultation with local self-government. There also exists provision for notifying items, and areas for exemption provided such exclusion does not violate other provisions. This is to exempt normally traded commodities so as not to adversely affect trade.

This bill seeks to check biopiracy, protect biological diversity and local growers through a three-tier structure of central and state boards and local committees. These will regulate access to plant and animal genetic resources and share the benefits. The National Biodiversity Authority (NBA) will deal with all cases of access by foreigners. Its approval will be required before obtaining any intellectual property right on an invention based on a biological resource from India, or on its traditional knowledge. It will oppose such rights given in other countries. The NBA will enjoy the power of a civil court. In addition, centre may issue directives to state if it feels a naturally rich area is threatened by overuse, abuse or neglect.

ENVIRONMENTAL CLEARANCE

Environmental Clearance is the procedure to get clearance from the government for the installation and modification (amendment) of certain projects. It is mandatory for projects which can cause high environmental Pollution. Indian Constitution made a list of those projects under EIA Notification 2006, which includes mining, thermal power plant, infrastructure, etc. Advent of industrialization brought many changes in our lifestyle and environment. And throughout these years, the awareness towards environment and the concern for its protection has made the Indian Constitution to enforce some laws and regulation towards this matter like Environmental Clearance. Environmental Clearance are mandatory regardless of the type of project in areas which are ecologically fragile such as – coastal area, wetlands, anthropological sites, international border areas, national parks & sanctuaries, areas of scientific and geological interests, etc.

The Central Pollution Control Board (CPCB) has also introduced a colour codification for industries depending on their impact of environment. Industries are classified on a pollution potential index as red, orange, green and white industries to differentiate environmental clearance process across categories.

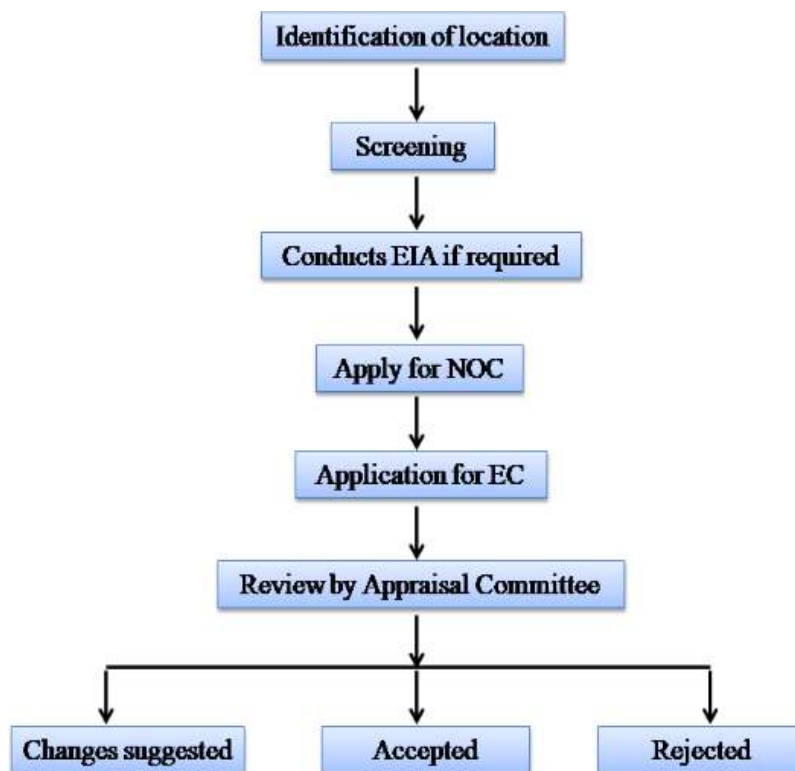
Red	Orange	Green	White
Pollution Index Score 60 and Above	Pollution Index Score 41 to 59	Pollution Index Score 21 to 40	Pollution Index Score up to 20
Example: * Hazardous Chemicals Manufacturing * Lead and Battery Manufacturing * Cement Industry * Nuclear Power Plants	Example: * Bakeries and Confectionery units * Food and Food Processing including fruits and vegetables processing * Automobile Servicing, Repairing and Painting * Building & Infrastructure projects	Example: * Ayurvedic and Homeopathic medicines without boiler * Carpentry & wooden Furniture * Mineralized water * Ready Mix Concrete	Example: * Blending and packing of Tea * Cotton & Woolen Hosiers making * Organic Manure Mixing * Diesel Pump Repairing & Servicing

PURPOSE OF ENVIRONMENTAL CLEARANCE

The main purpose behind Environmental Clearance is to assess the impact of the proposed project on environment and people, and to try to abate or minimize the impact of proposed project on environment and people. The purpose of Environmental Clearance is to assess the impact of the planned project on the environment and people and to try to abate / minimize the same. It seeks to curb industries and projects that supposedly hamper the environment and living species in one way or another. It serves as a legal consent for industries that are unfriendly to environment. It has been made mandatory under Environment Protection Act, 1986.

PROCEDURE FOR OBTAINING VARIOUS ENVIRONMENTAL CLEARANCES

The following steps are required to be followed to get Environmental Clearance for a proposed project.



Identification of location

A location for the proposed project should be selected which will comply with the existing guidelines. If project site does not comply with the existing guidelines the proponent has to identify other alternative site for the proposed project.

Screening

The project proponent then will assess in which category the proposed project falls in

and if it requires environmental clearance and environment impact assessment study.

There are two categories – A category and B category.

- Projects falling under A category has to go to MoEFCC for clearance.
- Projects falling under B category go to State government for clearance which further gets categorized into B1 and B2 projects. B2 projects do not require preparation of EIA report. But depending upon the project and its location the Appraisal Committee can ask project proponent to carry out EIA study.

Public hearing

The Public hearing is a mandatory step in the process of environmental clearance for certain developmental projects. It is a part of EIA study. This provides public of an area to come forward and express their concerns and views regarding the proposed project to the projectproponent and the Government.

Application

The project proponent then has to submit an application for environmental clearance. The Application process is Online.

- The projects falling under A category will apply on MoEFCC website. <http://environmentclearance.nic.in/>
- The projects falling under B category will apply on State website. For Tamil Nadu State, the application is done on Tamil Nadu Pollution Control Board's website.

Environmental Appraisal

The documents submitted by project proponent will be first scrutinized by a disciplinary committee. They might also conduct a site visit if required.

There are 3 SEAC Committee's.

- SEAC 1 gives appraisal for projects like industries, mining etc.
- SEAC 2 Committee gives appraisal for Infrastructure projects located in Mumbai and its suburbs.
- SEAC 3 Committee gives appraisal for infrastructure projects excluding Mumbai and its suburbs.

After scrutinized by the SEAC Committee, the project if accepted will be recommended to SEIAA (State Environment Impact Assessment Authority). The project will then be scrutinized by SEIAA for the compliance points recommended by SEAC and if accepted, SEIAA will grant Environment Clearance with certain conditions.

If the conditions said in the Environment Clearance are not followed then the Appraisal Committee has the right to cancel EC granted for that project.

The EC granted is valid for certain years depending upon the type of project. If EC is expired, the project proponent can go for renewal of EC by following the same procedure.

PROCESS OF ENVIRONMENTAL CLEARANCE IN INDIA

Site identification and selection

The project proponent pinpoints the plant's location after adhering to existing underlying guidelines. If the project site fails to ensure conformity with the siting guideline, the proponent must lookout for an alternative site for the project.

Category evaluation

The project proponent then evaluates whether the proposed project falls under the ambit of environmental Clearance or not. If it falls under the notification schedule, the proponent performs an EIA study either directly or via a third party. If the project falls under category B, it needs to be sanctioned via the state government for Clearance. For this purpose, the state government categorises such projects into B1 and B2 projects. The preparation of the EIA report is not required for the B2 project.

Submission of EIA report and Assessment by SPCB

After preparing the EIA report, the investor furnishes the same to the respective State Pollution Control Board and State-based Forest Department (if the location is present nearby/within the forestland). The SPCB examines and assesses the quantity and quality of effluent or pollutants likely to generate through the project. The authority also evaluates the efficacy of the control measures proposed to fulfil the underlying norms. If the SPCB does not find any loophole in this context, it shall grant its approval in the form of a No-objection certificate.

Public hearing

The public hearing is a vital step in securing environmental Clearance. This facilitates

a legal space for habitant of an area to put up their concern before the government regarding the credibility or viability of the project.

The public hearing process is performed before the issuance of the NOC described above. The District Collector is the person who chair such a committee. Other key members of the committee include the official from the SPCB, district development body, Department of Environment and Forest, Gram Panchayat representative and senior citizen of the district, etc. The hearing committee evaluates the suggestions/objections submitted by the general public. After adding certain clauses, it is passed on to the subsequent stage of approval (Ministry of Forest and Environment).

Application submission to MoEF

The project proponent furnishes the duly filed application for environmental Clearance with the Ministry of Forest and Environment if it falls under the category of Project A or the state government if it comes under project B category. The application form is accompanied by standard documents such as the EIA report, EMP, NOC, and public hearing details.

Environmental appraisal

The documents furnished are first examined by a multi-disciplinary committee comprising of staff of the Ministry of Environment and Forests. The said staff may also conduct on-site inspections, contact investors, and consult with experts on some issues if required. After this, the proposals are forwarded to specially constituted committees of professionals whose composition is mentioned in the EIA Notification. Such committees are called Environmental Appraisal Committees, which has been set up for each sector such as Industries, River Valley, and Mining etc. And these committees meet consistently to evaluate the proposals received in the Ministry. In the case of certain projects, which have attracted significant public attention, the committee may also arrange for public hearings to public intervention in developmental decisions. Proclamations for these public hearings shall be made thirty days before via newspapers. Based on the exercise cited above, the Appraisal Committees put forward their recommendations for approval or rejection of particular projects. The Committees' recommendations then undergo evaluation to be conducted by the Ministry of Environment and Forests.

Issuance of Clearance or rejection letter

A project seeks mandatory environmental Clearance and consent under Forest (Conservation) Act, 1980; the proposals are required to be facilitated simultaneously to the respective divisions of the Ministry. Though individual letters may be issued, the processing is undertaken concurrently for clearance/rejection. If the project does not have any requirement for forest land diversion, the case is processed for environmental Clearance only.

Once all the mandatory documentation and data from the concerned authorities are received, and public hearings have been successfully held, assessment and evaluation about the project from the environment view point are completed within 90 days. The Ministry's decision shall be conveyed within thirty days after that. The Clearance issued shall remain valid for five years from the commencement of the project's operation.

**ROLE AND FUNCTION OF ENVIRONMENTS OF ENVIRONMENT
TRIBUNAL /AUTHORITY**

- 1) On receipt of an application under sub-section (1) of section 4, the Tribunal may, after such inquiry as it may deem fit, reject the application summarily.
- 2) Where the Tribunal does not reject the application under sub-section (1), the Tribunal may, after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or each of the claims and may determine the amount of compensation which appears to be just and specifying the person or persons to whom such amount of compensation shall be paid.
- 3) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, (5 of 1908.) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry.
- 4) The Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (5 of 1908.) while trying a suit, in respect of the following matters. namely:-
 - a) summoning and enforcing the attendance of any person and examining him on oath;
 - b) requiring the discovery and production of documents;
 - c) receiving evidence on affidavits;

- d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- e) issuing commissions for the examination of witnesses or documents;
- f) reviewing its decisions;
- g) dismissing an application or deciding it ex parte;
- h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- i) any other matter which is to be, or may be, prescribed.

FUNCTIONS OF THE ENVIRONMENT TRIBUNAL

- 1) It is a body that has expertise in handling the disputes related to the environment which includes multi-disciplinary issues as well.
- 2) The Code of Civil Procedure, 1908, shall not bind the Tribunal as it is to be guided by natural justice principles.
- 3) The jurisdiction of the Tribunal shall provide speedy trials of the environment-related matters and shall help in reducing the burden of cases pending in the higher courts.
- 4) The tribunal is mandated to dispose off environment-related issues within 6 months of filing the complaint.
- 5) The Tribunal need not follow all that is given under the Civil Procedure Code but can regulate the procedure by itself and apply the principle of natural justice in administering justice.
- 6) It is required to apply principles such as sustainable development at the time of awarding compensation or giving orders.
- 7) It should have in mind the principle that whoever is found polluting will have to pay Compensation i.e. the principle of 'Polluter Pays'.
- 8) The Tribunal is not bound by the rules mentioned in the Indian Evidence Act.
- 9) All the proceedings before the Tribunal shall be accorded to the proceedings within the sections of the IPC.
- 10) The tribunal is allowed to be a civil court to settle the matters.

ENVIRONMENT AUDIT

An Environmental audit is a systematic examination to assess a company's environmental responsibility. It aims to identify environmental compliance, verify environmental responsibility implementation gaps whether they meet stated objectives, along with related corrective actions. The audit examines the potential hazards or risks posed by the company. Areas examined may include company environmental policies and procedures, energy use practices, recycling, waste, conservation, and pollution. Then, the company can use the results to determine what changes need to be made for compliance.

IMPORTANCE OF AN ENVIRONMENT AUDIT

Environmental auditing aims to protect the environment and to minimize the risks of business activities to the environment and human safety and health. Whereas, in the company's perspective, it aims to check whether the company has complied with the environmental regulations and requirements and has achieved the previously set environmental goals.

Building a good company reputation

Environmental audits can strengthen the company's image. For example, although it may not be fully compliant, the improvement efforts made will be seen as a positive step by the public. And, if it is compliant, it can lead to positive publicity, encouraging the public not to hesitate to continue buying products from the company.

- Audits help businesses become more sustainable. It also creates new marketing opportunities from other consumers. For example, companies use formal recognition or accreditation as a tool to create preferences for the company's products.

Avoid negative campaigns

Increasing external demands for environmental responsibility by pressure groups and environmental activists are forcing companies to check their compliance with environmental requirements. The increasing concern for the environment has made these demands more and more popular. If the company is not compliant, for example, they can campaign to boycott its products.

Adapt and comply with more stringent environmental regulations

Governments adopt more stringent environmental regulations and standards, usually by

international consensus. It forces companies to comply if they do not want to be penalized. Then, when done properly, a comprehensive environmental audit can uncover problem areas and provide recommendations for follow-up. So, the company can fix it before its reputation is destroyed and before facing any regulatory problems.

Environmental audits have several objectives:

- Assess the company's compliance with laws and regulations and other relevant requirements.
- Establish a performance basis for planning and developing an environmental management system.
- Promote good environmental management.
- Maintain credibility with the public.
- Raise awareness and enforce the company's internal commitment to environmental policies.
- Minimize risk exposure from environmental issues to health and safety.

TYPES OF ENVIRONMENT AUDITS

Environmental compliance audit

It evaluates a company's environmental performance and environmental responsibility practices, whether the company has complied with legal requirements and other requirements such as ISO 14001. It is usually the most comprehensive and, perhaps, the most expensive.

Environmental management audit

It verifies whether the company has met the environmental objectives, policies, and performance set by management.

Functional environmental audit

It focuses on one element or impact of a particular activity, such as waste water management audits, materials, and air quality monitoring.

BENEFITS OF AN ENVIRONMENT AUDIT

- Provide management with information about the management and performance of the company's environment as input for making decisions,
- Identify risks related to environmental responsibility and take action to implement

them,

- Ensure company operations comply with environmental laws and requirements and, if not, take necessary corrective actions,
- Identify environmental management system weaknesses before they cause problems,
- Develop organizational culture and increase environmental awareness among people within the company,
- Identify opportunities for improvement in environmental management and performance to drive increased efficiency and cost savings,
- Improve company transparency to stakeholders such as government, customers, and investors to support long term good relationships with them,
- Encourage positive publicity by publishing audit results, thereby enhancing the reputation and image of the company, and
- Develop marketing strategies and strengthen brand equity,
- Encourage consumers to remain loyal to the company.

LIMITATIONS OF AN ENVIRONMENT AUDIT

- Audits can be time-consuming and expensive to perform and are therefore not suitable for small businesses with limited financial resources.
 - Companies may simply take advantage of positive publicity without actually intending to be environmentally responsible.
 - Internal audits can be biased and lead to a consistently good environmental record, but this is not the case.
-

UNIT V

Consumer Protection Act 2019– Consumer rights, Procedures for Consumer grievances redressal, Types of Consumer Redressal - Machineries and Forums – Competition Act 2002 -- Cyber crimes, IT Act 2000 and 2002, Cyber Laws, Introduction of IPR – Copy rights, Trade Marks, Patent Act.

UNIT – V

CONSUMER PROTECTION ACT, 2019

INTRODUCTION

Consumer protection is the practice of safeguarding buyers of goods and services against unfair practices in the market. It refers to the steps adopted for the protection of consumers from corrupt and unscrupulous malpractices by the sellers, manufacturers, service providers, etc. and to provide remedies in case their rights as a consumer have been violated.

In India, the protection of the rights of the consumers is administered by the Consumer Protection Act, 2019. The Consumer Protection Act, 2019 was introduced to replace the Consumer Protection Act, 1986. The new Act contains various provisions which incorporate the challenges faced by modern and technology-dependent consumers. The Act also contains various provisions for protecting and promoting the rights of the consumers.

CONSUMER

A consumer is an individual or group of individuals who purchase goods and services for their own personal use and not for the purpose of manufacturing or resale. Section 2(7) of the Consumer Protection Act, 2019 defines a consumer as any person who buys goods or services in exchange for consideration and utilises such goods and services for personal use and for the purpose of resale or commercial use. In the explanation of the definition of consumer, it has been distinctly stated that the term ‘buys any goods’ and ‘hires or avails any services’ also includes all online transactions conducted through electronic means or direct selling or teleshopping or multi-level marketing.

NEED FOR THE CONSUMER PROTECTION ACT, 2019

The Consumer Protection Act, 2019 was enacted by the Indian legislature to deal with matters relating to violation of consumers’ rights, unfair trade practices, misleading advertisements, and all those circumstances which are prejudicial to the consumers’ rights. The intention of the Parliament behind enacting the Act was to include provisions for e-consumers due to the development of technology, buying and selling of goods and services online have considerably increased during the last few years.

The Act seeks to provide better protection of the rights and interests of the consumers by establishing Consumer Protection Councils to settle disputes in case any dispute arises and to provide adequate compensation to the consumers in case their rights have been

infringed. It further provides speedy and effective disposal of consumer complaints through alternate dispute resolution mechanisms. The Act also promotes consumer education in order to educate the consumers about their rights, responsibilities and also redressing their grievances.

OBJECTIVE OF THE CONSUMER PROTECTION ACT, 2019

The main objective of the Act is to protect the interests of the consumers and to establish a stable and strong mechanism for the settlement of consumer disputes. The Act aims to:

1. Protect against the marketing of products that are hazardous to life and property.
2. Inform about the quality, potency, quantity, standard, purity, and price of goods to safeguard the consumers against unfair trade practices.
3. Establish Consumer Protection Councils for protecting the rights and interests of the consumers.
4. Assure, wherever possible, access to an authority of goods at competitive prices.
5. Seek redressal against unfair trade practices or unscrupulous exploitation of consumers.
6. Protect the consumers by appointing authorities for timely and sufficient administration and settlement of consumers' disputes.
7. Lay down the penalties for offences committed under the Act.
8. Hear and ensure that consumers' welfare will receive due consideration at appropriate forums in case any problem or dispute arises.
9. Provide consumer education, so that the consumers are aware of their rights.
10. Provide speedy and effective disposal of consumer complaints through alternate dispute resolution mechanisms.

CONSUMER RIGHTS

There exist six rights of a consumer under the Consumer Protection Act, 2019.

The rights of the consumers are mentioned under Section 2(9) of the Act, which are as follows:

1. to be protected from the marketing of goods and services that are hazardous and detrimental to life and property.
2. to be protected against unfair trade practices by being aware of the quality, quantity, potency, purity, standard and price of goods, products or services.
3. to have access to a variety of goods, services and products at competitive prices.
4. to seek redressal at respective forums against unfair and restrictive trade practices.
5. to receive adequate compensation or consideration from respective consumer forums in case they have been wronged by the seller.
6. to receive consumer education.

UNFAIR TRADE PRACTICES

Section 2(47) of the Consumer Protection Act, 2019 defines the term ‘unfair trade practices’ which include:

1. Manufacturing spurious goods or providing defective services.
2. Not issuing cash memos or bills for the goods purchased or services rendered.
3. Refusing to take back or withdraw the goods or services and not refunding the consideration taken for the purchase of the goods or services.
4. Disclosing the personal information of the consumer.

CHANGES INCORPORATED IN CONSUMER PROTECTION ACT, 2019

The changes that were incorporated with the enactment of the Consumer Protection Act, 2019 are:

1. The District Commissions will have the jurisdiction to entertain complaints where the value of the goods, services or products paid as consideration to the seller does not exceed 50 lakh rupees.
2. State Commissions will have the jurisdiction to entertain complaints where the value of the goods, services or products paid as consideration to the seller exceeds 50 lakh rupees but does not exceed two crore rupees.
3. The National Commission will have the jurisdiction to entertain complaints where the

value of the goods, services or products paid as consideration to the seller exceeds two crore rupees.

4. The Act further states that every complaint concerning consumer dispute shall be disposed of as expeditiously as possible. A complaint filed under this Act shall be decided within the period of three months from the date of receipt of notice by the opposite party in the cases the complaint does not require analysis or testing of the goods and services and within a period of 5 months, if it requires analysis or testing of the goods and services.
5. The Consumer Protection Act, 2019 also facilitates the consumers to file complaints online. In this regard, the Central Government has set up the E-Daakhil Portal, which provides a convenient, speedy and inexpensive facility to the consumers all over India so that they are able to approach the relevant consumer forums in case any dispute arises.
6. The Act lays down the scope for e-commerce and direct selling.
7. The Consumer Protection Act, 2019 lays down provisions for mediation and alternative dispute resolution so that the parties are able to dispose of the case conveniently without going through the trouble of litigation.
8. The Consumer Protection Act, 2019 contains provisions for product liability, unfair contracts and it also includes three new unfair trade practices. In contrast, the old Act just stated six types of unfair trade practices.
9. The Act of 2019 acts as the advisory body for the promotion and protection of consumer rights.
10. Under the Consumer Protection Act, 2019 there is no scope for selection committees, the Act authorizes the Central Government to appoint the members.

Therefore, with the changes in the digital era, the Indian Parliament enacted and brought the Consumer Protection Act, 2019 in force to include the provisions for e-commerce as digitalization has facilitated convenient payment mechanisms, variety of choices, improved services, etc.

ESSENTIAL PROVISIONS OF CONSUMER PROTECTION ACT, 2019

The essential provisions of the Consumer Protection Act, 2019 are:

Consumer Protection Councils

The Act establishes consumer protection councils to protect the rights of the consumers at both the national and state levels.

Central Consumer Protection Council

Under Chapter 2 Section 3 of the Consumer Protection Act, 2019 the Central Government shall establish the Central Consumer Protection Council which is known as the Central Council. It is an advisory body and the Central Council must consist of the following members;

1. The Minister-in-charge of the Department of Consumer Affairs in the Central Government will be appointed as the chairperson of the council, and
2. Any number of official or non-official members representing necessary interests under the Act.

The Central Council may meet as and when necessary, however, they must convene at least one meeting every year. The purpose of the Central Council is to protect and promote the interests of the consumers under the Act.

State Consumer Protection Councils

Every state government shall establish a State Consumer Protection Council known as the State Council having jurisdiction over that particular state. The State Council acts as an advisory body. The members of the State Council are:

1. The Minister-in-charge of the Consumer Affairs in the State Government will be appointed as the chairperson of the council,
2. Any number of official or non-official members representing necessary interests under the Act, and
3. The Central Government may also appoint not less than ten members for the purposes of this Act.

The State Councils must hold at least two meetings every year.

District Consumer Protection Council

Under Section 8 of the Act, the state government shall establish a District Consumer Protection Council for every district known as the District Council. The members of the District Council are:

1. The collector of that district will be appointed as the Chairperson of the District Council, and

2. Any other members representing necessary interests under the Act.

Central Consumer Protection Authority

The Central Government shall establish a Central Consumer Protection Authority which is known as the Central Authority under Section 10 of the Consumer Protection Act, 2019, to regulate matters relating to violation of the rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of the public and consumers and to promote, protect and enforce the rights of consumers. The Central Government will appoint the Chief Commissioner and the other Commissioners of the Central Authority as required under the Act.

The Central Authority must have an 'Investigative Wing' under Section 15 of the Act to conduct an inquiry or investigation. The investigative wing must comprise of the Director- General and the required number of Additional Director-General, Director, Joint Director, Deputy Director and Assistant Director possessing the required experience and qualifications to carry out the functions under this Act.

Functions and duties of the Central Authority

The functions and responsibilities of the Central Authority are laid down in Section 18 of the Act which includes;

1. To protect and promote the rights of the consumers as a class and to prevent violation of consumer rights,
2. To prevent unfair trade practices,
3. To ensure no false or misleading advertisements regarding any goods or services
4. To ensure no person takes part in false or misleading advertisements,
5. Inquire or investigate in cases of violation of consumer rights or unfair trade practices.
6. File complaints before the National, State or District Commission as the case may be,
7. To review matters relating to the factors hindering the enjoyment of consumer rights.
8. To recommend the adoption of international covenants and best international practices concerning consumer rights

9. Promote research and awareness of consumer rights.
10. Lay down necessary guidelines to prevent unfair trade practices and protect the interests of the consumers.

Furthermore, the Central Authority also has the power to investigate after receiving any complaint or directions from the Central Government or of its own motion in cases where there is an infringement of consumer rights or unfair trade practices are carried out. And if the Central Authority is satisfied that infringement of consumer rights or unfair trade practices has occurred then it may:

- Recall the goods or services which are hazardous and detrimental to the consumers,
- Reimburse the prices of the goods and services to the consumers, and
- Discontinue the practices that are prejudicial and harmful to the consumers.

Under Section 21 of the Act, the Central Authority is authorized to issue directions to false and misleading advertisements which may extend up to ten lakh rupees. While determining the penalty of the offence the Central Authority must keep in mind factors such as; the population affected by the offence, frequency of the offence and gross revenue from the sales of such product. The Central Authority can also direct search and seizure for the purposes of this Act and in that case the provisions of the Criminal Procedure Code, 1973 will apply.

CONSUMER DISPUTES REDRESSAL COMMISSION

The state government shall establish a District Consumer Disputes Redressal Commission, known as the District Commission in each district of the state under the Consumer Protection Act, 2019. The District Commission shall comprise of a President and not less than two members prescribed by the Central Government.

Section 34 of the Act authorizes the District Commission to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees. The complaint relating to goods and services can be filed to the District Commission by the consumer, recognized consumer association, Central Government, Central Authority, State Government, etc.

Section 36 states that all the proceedings before the District Commission shall be conducted by the President and at least one member of the commission.

Mediation

Chapter 5 Section 74 of the Consumer Protection Act, 2019 states that a Consumer Mediation Cell shall be established by the Central Government at the national level and every state government shall establish Consumer Mediation Cell exercising within the jurisdiction of that state. The mediator nominated to carry out the mediation shall conduct it within such time and in such manner as may be specified by regulations.

Section 75 of the Act talks about the empanelment of the mediators. It states the qualifications, terms and conditions of service, the procedure for appointing, and the fee payable to the empanelled mediators.

It is the duty of the mediator to disclose certain facts such as; any personal, financial or professional in the result of the consumer dispute, the circumstances giving rise to their independence or impartiality and any other necessary information for the protection of consumer rights.

Product liability

Under Section 83 of the Act, a product liability action may be brought by a complainant against a product manufacturer, product service provider or product seller.

Liability of product manufacturer

A product manufacturer will be held liable in a product liability action under the following circumstances:

- The product contains manufacturing defects.
- The product is defective.
- There is a deviation from manufacturing specifications.
- The product does not conform to the express warranty.
- The product fails to contain adequate information for proper usage.

Liability of product service provider

A product service provider will be held liable in a product liability action under the following circumstances:

- The service provider will be responsible when the service provided by them is faulty or imperfect.

- There was an act of negligence on their part.
- The service provider failed to issue adequate instructions and warnings for the services.
- The service provider failed to conform to the express warranty or terms and conditions of the contract.

Liability of product seller

A product seller will be held liable in a product liability action under the following circumstances:

- They altered or modified the product which resulted in being detrimental to the consumer.
- They failed to exercise reasonable care in assembling, inspecting or maintaining such product
- They exercised substantial control over the product which resulted in causing harm to the consumer.

Exceptions to product liability

There are certain exceptions to product liability action mentioned in Section 87 of the Act such as;

- The product was altered, modified or misused by the consumer,
- A consumer cannot bring product liability action when the manufacturer has given adequate warnings and instructions for the use of the product,
- The manufacturer would not be liable in case of a product liability action for not warning about any danger that is commonly known to the general public.

OFFENCES AND PENALTIES UNDER CONSUMER PROTECTION ACT, 2019

The offences and penalties listed under this Act are as follows.

1. Punishment for false and misleading advertisements:

Under Section 89 of the Act any manufacturer or service provider who promotes false or misleading advertisements will be punished with imprisonment for a term that may extend to two years and with fine that may extend to ten lakh rupees.

2. Punishment for manufacturing, selling, distributing products containing adulterants:

Under Section 90 of the Consumer Protection Act, 2019 any person who sells, manufactures, distributes products containing adulterants shall be penalised in case of the following circumstances;

- If the adulterated product does not cause any injury to the consumer then the term for imprisonment will extend to a period of six months and fine which may extend to one lakh rupees,
- If the product containing adulterant causes injury not amounting to grievous hurt then the term for imprisonment will extend to a period of one year and fine which may extend to three lakh rupees,
- If the product containing adulterant causes injury amounting to grievous hurt then the term for imprisonment will extend to a period of seven years and fine which may extend to five lakh rupees,
- If the product results in causing death to the consumer then the term for imprisonment will be for a period of seven years which may extend to life imprisonment and fine not less than ten lakh rupees.

3. Punishment for manufacturing, selling, and distributing spurious products:

Section 91 states that any person who sells, manufactures, or distributes spurious products shall be punished for such acts.

CONSUMER BENEFIT UNDER CONSUMER PROTECTION ACT, 2019

The Consumer Protection Act, 2019 is a significant piece of legislation brought as it is beneficial for the consumers. The Act widens the scope of protection regarding the rights and interests of consumers.

1. **Unfair contracts:** The Act introduced 'unfair contract' under Section 2(46) of the Act, which includes contracts requiring excessive security deposits to be given by the consumer for the performance of contractual obligations. However, the inclusion of unfair contracts in the Act would enable the consumer to file complaints in such cases and would also keep the fraudulent businesses in check.
2. **Territorial jurisdiction:** The Act enables the consumers to file complaints where the complainant resides or personally works for gain thus it would benefit the consumers

in seeking redressal for their grievances when their rights have been violated.

3. **False and misleading advertisements:** The Act defines the term ‘false and misleading advertisements’ and also lays down strict penalties for such acts or omissions.
4. **Product liability:** The term ‘product liability’ has been defined by this Act, which states that it is the duty of the product manufacturer, service provider or seller to compensate for any harm caused to a consumer by such defective product manufactured or service provided to the consumer.
5. **Mediation and alternative dispute resolution:** The Act enables the consumer to opt for mediation and alternative dispute resolution mechanisms for speedy and effective settlement of consumer disputes.
6. **E-filing of complaints:** The Act also facilitates e-filing of the complaints and seeking video conference hearings by the Commission. Thus, providing convenient means for the consumers to voice their grievances.

The Consumer Protection Act, 2019 is a modified piece of legislation that offers the consumers a great variety of benefits and rights to protect them from unfair trade practices, false or misleading advertisements, etc.

The Act enables the consumers to seek alternative dispute resolution mechanisms and mediation so that the parties can opt for speedy and effective settlement of consumer disputes. The scope of e-filing of complaints and e- consumers in the Act portrays forward-thinking in part of the legislature.

Furthermore, the Act also introduced new terms such as product liability, unfair contracts, etc. thereby widening the scope of protection of consumer rights and enabling the consumers to file complaints when their rights have been violated under the Act. Thus, the inclusion of the provisions in this fills up the lacunae in the Consumer Protection Act, 1986. The enactment of the Act was of paramount importance and it changed the ambit of protecting the rights of consumers in the country.

COMPETITION ACT, 2002

The concept of the ‘Competition Commission’ was introduced as the Competition Act, 2002. It was considered that competition and private enterprise are to be encouraged, particularly in light of the 1991 economic liberalisation of India. Modern competition rules

are based on the Competition Act of 2002, as updated by the The Competition (Amendment) Act of 2007. The President gave his approval to the Competition Act of 2002 in January of 2003, after Parliament enacted it in 2002. The Competition Commission of India (CCI) and the Competition Appellate Tribunal have been constituted in compliance with the Amendment Act's requirements.

The Act forbids anti-competitive agreements, corporate abuse of dominant positions, and combinations (including acquisitions, takeovers of control, and mergers and acquisitions) that have or are likely to have a materially negative impact on competition in India. In order to not only prevent negative effects on competition but also sustain and foster pro-competitive behaviour, the Competition Act was passed in 2002. The Act also aims to safeguard the freedom of trade practiced by all market players in India, as well as any issues related to or incidental to freedom of trade. The new law's framework not only fixed the shoddy setup from its predecessor, but it also made adjustments and provided equipment for the time's economic environment. Extraterritorial jurisdiction, harmonisation with Intellectual Property Rights and other laws, overlaps between the Competition Act, 2002 and sectoral regulatory laws, and competition advocacy, were some of the Act's special features.

The Act controls three anti-competitive behaviours, namely, mergers and acquisitions (combinations), abuse of dominant positions, and anti-competitive agreements. The basic standard for the control of anti-competitive behaviour is that such behaviour should not significantly harm competition within India. The definition of anti-competitive agreements is provided in Section 3 of the Act, which divides these agreements into two groups, namely, horizontal agreements and vertical agreements. It stipulates that, with a few exceptions as given in Section 3(5), all anti-competitive agreements that have the potential to have a materially adverse impact on competition in India shall be void.

Through the CCI, which the Central Government established with effect on October 14, 2003, the Act's goals are intended to be accomplished. The Central Government appoints the chairperson and six other members of the CCI. The commission has a responsibility to stop activities that harm competition, foster and maintain it, safeguard consumer interests, and guarantee trade freedom in Indian markets. The commission is also required to provide an opinion on competition-related matters in response to a referral from a statutory authority established by any

law, engage in competition advocacy, raise awareness among the general public, and impart training on competition-related matters.

The Competition Act of 2002 must now be explored, questioned, and investigated for its effectiveness in the technological age, in the face of digitalization, commercialization, and the Internet of Things. India has now reached another critical juncture, a crossroads in its antitrust regime. Consideration of whether India urgently requires a long-term amendment to the Competition Act, 2002, is becoming more and more necessary as the last remaining brick-and-mortar stores steadily disappear and internet behemoths graze the opulent savannah of the country's largely unregulated and greatly diverse economy.

OBJECTIVE AND SCOPE OF THE COMPETITION ACT, 2002

The Competition Act of 2002 is a piece of legislation that aims to defend consumer interests from anti-competitive behaviour, foster and sustain market competition, safeguard consumer interests, and guarantee other market participants' freedom of trade. The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), which formerly applied only to India, has been replaced by the new law.

The three foundational pieces of competition legislation upon which the Competition Act has been built are the National Competition Policy (NCP), the Competition Appellate Tribunal, and the Competition Commission of India (CCI).

The major reason for passing this legislation is to make sure that market competition operates as intended and that customers have access to a broader variety of goods at reasonable costs.

IMPORTANT DEFINITIONS UNDER THE COMPETITION ACT, 2002

The Act includes a number of crucial terminologies that must be understood in order to comprehend how the Act operates. The same has been discussed hereunder.

Cartel

An organisation of producers, sellers, distributors, traders, or service providers is referred to as a cartel under the Act if it has an agreement to limit, control, or attempt to control the production, distribution, sale, or price of goods or the trade in them or the provision of goods or services. Cartels have been classified as those anti-competitive agreements in which producers, sellers, and makers of similar items agree to regulate production, supply prices, and other aspects of goods

in order to obtain desired profits and market domination.

Enterprise

According to Section 2(h) of the Act, “enterprise” refers to and includes any person or government department that engages in any of the following activities:

1. The creation, maintenance, supply, distribution, acquisition, or management of goods or articles;
2. The rendering of any type of service;
3. Purchasing, investing in or holding shares or other securities of any other legal entity, either directly or via a subsidiary.

However, for the purposes of the Act, a government department carrying out operations related to the government’s sovereign functions, including those related to atomic energy, money, defence, and space, shall not be referred to as an “enterprise.”

Person

The definition of “person” is broad in Section 2(l) of the Act. According to this, a “person” includes the following:

1. A person, a Hindu undivided family, an organisation, or a firm.
2. A group of individuals, whether or not they are incorporated in India or elsewhere.
3. Any corporation founded by the federal, state, or local governments, or a government company as described by the Companies Act, 2013.
4. Any corporation formed by or in accordance with the laws of a nation other than India.
5. Any cooperative society, regional government, or artificial legal entity.

Relevant Market

According to Section 2(r) of the Act, determining what constitutes a ‘relevant market’ depends on two criteria, namely ‘relevant geographic market’ and ‘relevant product market.’ Either the ‘relevant geographic market’ or the ‘relevant product market’ must be mentioned by the commission, or both.

A relevant geographic market refers to a market in a region where uniform conditions apply to different facets of trade and commerce. Such circumstances set them apart from markets in surrounding regions.

1. The term “relevant product market” refers to a market where the goods and services

are interchangeable or replaceable with other goods and services offered in that market.

Section 3 of the Competition Act, 2002

Any arrangement between businesses or individuals that could significantly harm Indian competition is prohibited by Section 3 of The Competition Act, 2002. There are certain exclusions to this rule. In Section 3(3) of the Competition Act of 2002, a list of the agreements that are considered anti-competitive is provided, namely,

1. Price setting or any other type of trade condition (i.e. price-fixing).
2. Restricting or managing service provision, investment, markets, technological advancement, or manufacturing (i.e. limiting production).
3. Allocating a specific geographic market area, a specific product or service, a certain quantity of clients, or a source of production (i.e. market sharing).
4. Preventing or restricting competitors' access to the market (i.e. entry control).

Any agreements made by businesses or groups of businesses, or by people or associations of individuals, in connection with the production, provision, allocation, stockpiling, collecting, or acquisition of products or the provision of services linked to:

1. Research and development,
2. Technical data,
3. Standards,
4. Testing resources,
5. Accessibility to cutting-edge technology,
6. Marketing, and
7. Export-related operations.

Section 4 of the Competition Act, 2002

One of the three criteria outlawed by The Competition Act of 2002, along with anti-competitive agreements and abuse of dominance, is the dominant position. One of the key challenges that competition law, often known as antitrust law, addresses is dominance. The

concept of “dominance” refers to the ability of a firm or group of firms to influence output or pricing in the relevant market.

Abuse refers to the misuse, exploitation, or excessive use of a person’s power. Therefore, to abuse a dominant position in the relevant market, one must misuse, exploit, or overuse it. According to Section 4(2), consideration must be given to all of the following considerations when determining whether a company has a dominant position:

1. The business’s size and resources;
2. The magnitude and significance of its rivals;
3. The company’s financial strength includes commercial advantages over rival businesses such as the right patents, licences, and permissions;
4. The enterprise’s vertical integration, including any backward or forward integration;

To compete successfully in a market where such supplies are dependent on other businesses, having access to sources of commodities or raw materials is crucial;

Where there is reliance on other businesses for such markets, the ability to access marketplaces for goods or services is critical to effectively compete in those markets.

FEATURES OF THE COMPETITION ACT, 2002

Some of the notable features of The Competition Act, 2002 have been laid down here under:

1. **Anti-competitive agreements:** Any agreement between two or more businesses or individuals to preserve market competition and protect consumers’ interests in India is prohibited by the competition law. These agreements may be horizontal or vertical.

Horizontal agreements are those between businesses at the same level of production, whereas vertical agreements are those between businesses at various phases of production.

2. **Anti-cartels:** Any business that abuses its dominant position will face consequences.
3. **Anti-abuse of dominance:** Any arrangement between businesses or individuals that

lessens competition would be regarded as illegal.

4. **Combination regulations:** Only if a merger or acquisition does not damage market competition will the commission make a decision.
5. **Informative nature of this Act:** Before taking any action or signing any agreement, an organisation must tell CCI of its dealings that are likely to harm market competition in order to ensure transparency and prevent any misunderstandings between businesses or individuals.

CYBER CRIME

Cyber-crime is not an old sort of crime to the world. It is defined as any criminal activity which takes place on or over the medium of computers or internet or other technology recognised by the Information Technology Act. Cyber-crime is the most prevalent crime playing a devastating role in Modern India. Not only the criminals are causing enormous losses to the society and the government but are also able to conceal their identity to a great extent. There are number of illegal activities which are committed over the internet by technically skilled criminals. Taking a wider interpretation, it can be said that, Cyber-crime includes any illegal activity where computer or internet is either a tool or target or both.

The term cyber-crime may be judicially interpreted in some judgments passed by courts in India; however, it is not defined in any act or statute passed by the Indian Legislature. Cyber-crime is an uncontrollable evil having its base in the misuse of growing dependence on computers in modern life. Usage of computer and other allied technology in daily life is growing rapidly and has become an urge which facilitates user convenience. It is a medium which is infinite and immeasurable. Whatsoever the good internet does to us, it has its dark sides too. Some of the newly emerged cybercrimes are cyber-stalking, cyber-terrorism, e-mail spoofing, e-mail bombing, cyber pornography, cyberdefamation etc. Some conventional crimes may also come under the category of cybercrimes if they are committed through the medium of computer or Internet.

INFORMATION TECHNOLOGY ACT 2000

Information Technology Act was passed as a response to the developments in the IT Sector, to facilitate e-commerce and e-governance, and to control cybercrimes. Internet has become a necessity today and with its increased penetration, clarity was needed in the

domain, IT Act was an attempt to provide much needed clarity and direction. This unit discusses various facet of IT Act 2000 and IT Amendment Act 2008.

DEFINITION

The Information Technology Act, 2000 is the law pertaining to information technology. IT Act, 2000 was the result of passing of the IT the Bill by both the houses of Parliament. The Act is grounded on the United Nations Commission on International Trade Law(UNCITRAL). It deals with Ecommerce and cybercrimes. It is, “An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as electronic commerce”. The Act came into force on 17.10.2000.

FORMULATION OF IT ACT 2000

The advent of internet and then the growth in internet-based business transactions necessitated the formulation and implementation of law to regulate the field. The digital technology has transformed our lives, more and more individuals and businesses are adopting it and are conducting several activities with the help of it. Before the formulation of IT Act 2000, the overall environment was of apprehension. Individuals and businesses were aware of the advantages this digitalization brought along, but at the same time they were hesitant to conduct activities, especially monetary transactions owing to the lack of a legal framework which would protect them from some untoward incidents. To match steps with the strides being taken in digital world, the UNCITRAL adopted the Model Law on Electronic commerce in the year 1996. India was also a signatory to this and hence was expected to introduce laws as per the Model Law. Keeping in view, these factors the IT Bill was introduced to facilitate E-commerce as well as E-governance. The IT Bill was drafted in the year 1998. Then the bill was then put in front of Parliamentary standing committee wherein, certain modifications were suggested. Finally, the IT Ministry suggested some changes and the approved modifications were retained in the bill and the rest were discarded. The bill was approved by the Union cabinet and then both the houses of Parliament. The President of India also provided his assent to the Bill and it became an Act that came into force on 17th October, 2000.

The IT Act, 2000 brought in amendments into the Indian Penal Code 1860, the Indian Evidence Act 1872, Bankers Book Evidence Act 1891 and the Reserve Bank of India

Act 1934, thereby incorporating the issues related to crimes and evidences based on electronic mode and to address the need for regulations pertaining to electronic transfer of funds.

AMENDMENTS IN IT ACT 2000

The Information Technology Act was enacted in the year 2000 to bring in the necessary changes for growth of digitalization and e-commerce transactions, and to ensure safety and security of such transactions, thereby preventing crimes. The act was then amended to account for the developments in the domain, these amendments were passed by both the houses of Parliament in 2008 and received President's assent on 5th February, 2009, thus becoming the Amendment Act. It introduced various positive developments. It was seen as an effort by the Government of India to create a policy that is able to maintain pace with the evolving technology. The Indian Computer Emergency Response Team (CERT-In) is responsible for administration of the Act. The amendment attempted to fill in the gaps left by the earlier Act, and address the security concerns. The Act was the need of the hour as with increasing digitalization, the crimes in the digital space or with the help of digital aids also proliferated. Sending/sharing offensive content, phishing, identity theft, frauds, etc. were crimes which had to be brought within the ambit of penal provisions. All these factors led to the amendments in IT Act 2000, thus paving the way for IT Act 2008. The IT Act 2008 revolutionized the cyber law framework of the nation. The Act addressed various issues such as incorporating electronic signature, inclusion of greater number of cyber offences, addressing the concerns pertaining to data protection, privacy, and also dealt with the issues related to use of digital/cyber medium for terrorism.

DIGITAL SIGNATURE & ENCRYPTION

Under the provisions of IT Act 2000, digital signature may be used by any subscriber for the purpose of authentication of an electronic record. The electronic record is authenticated with the help of "asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record. (Section 2(1)(p) of the Information Technology Act, 2000)." Traditionally, the signature by an individual on any document helps in authentication of the document and provides an assurance to the receiver regarding its trustworthiness. This is possible in case of a paper-based document, but in case of electronic document, just mentioning the name at the end of document or email provides almost no reassurance regarding its authenticity.

The IT Act, 2000 recognizes public key cryptography for the safeguarding of electronic documents. The Section 3 of the Act further provides a user the power for authentication of an electronic record by affixing his digital signature. The authentication process will apply “asymmetric crypto system and hash function that envelops and transforms the initial electronic record into another record”. The electronic record can be verified by any other person who is in the possession of the public key. Furthermore, every subscriber has a private as well as a public key which are unique to him and which constitutes a functioning key pair. The creation of digital signature requires application of encryption to specific information.

The process involves the following steps:

- ✚ The message that has to be signed using digital signature is outlined, and then processed with the help of an algorithm called hash function. The processed output thus received is called the hash result which is unique to the message.
- ✚ This hash result so produced is encrypted using the private key of the sender. This is the Digital Signature.
- ✚ The Digital Signature is then attached to the message which is then transmitted over to the receiver through internet.
- ✚ Once the message is received at the receiver’s end, he uses the public key of the sender to decrypt the message. If the sender’s message is successfully decrypted using his public key and the hash result is computed and compared with the output of the digital signature, then the receiver is assured of the authenticity and integrity of the message.

PENALTIES AND ADJUDICATION

The Information Technology (Amendment) Act, 2008 added several crimes related to cyber space and also introduces penalties for control of such crimes. With increasing penetration of digitalization, the flow of information has been transformed. While there are myriads of advantages of usage of digital media, it is not untouched by increasing crimes. The cyberspace has removed the barriers of geography and has made knowledge/information volatile.

To prevent the misuse of information and thus losses accruing out of it, the IT Act introduced penalties. The chapter IX of the IT Act discusses about Penalties, Compensation and Adjudication. The penalties for various offences are as follows:

Section 43: “Penalty and Compensation for damage to computer, computer system, etc (Amended vide ITAA-2008)”. This section says, if any individual who is not authorised to access/use a computer, computer system or computer network accesses it, or extract data from it in any form, introduces virus in it or is responsible for some action resulting in virus attack, disrupts it, tampers it, or destroys, deletes or alters any information contained therein will be held responsible for the payment of damages by the way of compensation to the affected person. The compensation should not exceed one crore rupees. This is also applicable in cases wherein he denies the access to authorised person, provides assistance to other for malicious activities, or steals, conceals or destroys the source code of the computer resource with the intention of causing damages.

Section 43 A: “Compensation for failure to protect data (Inserted vide ITAA 2006, Change vide ITAA 2008)”. This section deals with cases of negligence, and says “Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation, not exceeding five crore rupees, to the person so affected.”

Section 44: “Penalty for failure to furnish information, return, etc.” This section discusses penalties resulting from the failure to furnish information, or record, file return, maintain books of account or records. If an individual who is required by the Act to provide information or return or report to controller or certifying authority, fails to fulfill the requirement, he will be held, “liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure”. If he fails to “file any return or furnish any information, books or other documents within the time specified therefore in the regulations fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues” and if he is required by the Act to maintain a book of account or maintain certain records, fails to do so, “he shall be liable to a penalty no exceeding ten thousand rupees for every day during which the failure continues.”

Section 45: “Residuary Penalty”: If an individual acts in opposition to any rule and regulation that has been laid down by the IT Act, for which any specific penalty has not

been mentioned in the Act, he will be held liable for the payment of compensation of an amount not exceeding Rs.25000 to the individual who gets impacted by the action or a penalty of an amount not exceeding Rs.25000.

Adjudication

For adjudication pertaining to the matters discussed in the chapter, Central Government has the power to appoint an adjudicating officer. The “Adjudicating Officer should not be below the rank of a director to the GoI or an equivalent officer of a state”. An individual should be appointed as an adjudicating officer only if he has relevant “experience in the field of IT and legal or has judicial experience as prescribed by the Central Government”. While imposing penalties or awarding compensation, the adjudicating officer shall give reasonable opportunities for representation and should award compensation or penalize only when he is fully satisfied. The adjudicating officer “shall have the powers of a civil court which are conferred on the Cyber Appellate Tribunal under sub-section (2) of section (2) of section 58.”

Section 47 of the Act discusses the factors which should be considered by the adjudicating officer while awarding compensation. It says that the officer should be mindful of the gains of unfair advantage which resulted from the default, “the amount of loss caused to the aggrieved party as a result of the default, and the repetitive nature of the default.

E-SIGNATURE AND DIGITAL SIGNATURE

The IT Act of India discusses two types of signatures:

- Electronic Signature, and
- Digital Signature.

Important points for comparison have been summarized below:

Section 2(1) (ta) of the IT Act 2008 defines Electronic Signature as: “electronic signature means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature”.

The section 2(1) (p) of the IT Act 2000 talks about Digital Signatures and defines it as “digital signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3” of the Information Technology Act.

Electronic Signatures are technologically neutral and the act does not specify any particular technology for the purpose of creation of electronic signature while digital

signature follows specific technology-based approach. For example, usage of hash functions, use of public key cryptography system, etc.

Electronic Signature can be biometric, name typed at the end of a mail, digitalized version of conventional signature. Digital signature uses two-way protection system with encryption and decryption.

Digital Signatures are more authentic than electronic signatures.

Electronic signatures are used for the purpose of verification of document while Digital Signatures are used for securing the document.

Digital Signatures have limited validity of maximum three years, while electronic signatures have no such limits on validity.

ENCRYPTION

A Digital Signature is used for the authentication of an electronic record. These signatures are created and verified with the help of cryptography. The authentication process involves two other processes: Encryption and Decryption.

Encryption involves transformation of simple messages into cipher text while the process of decryption reverses the coded texts into the actual simple message.

Encryption-Decryption has two forms:

Symmetric Encryption: It is the most basic kind of encryption involving only one secret key for the purpose of encryption and decryption of information. The key is known to both: the sender as well as the receiver of the message.

Asymmetric Encryption: There are two keys involved in this case for encrypting/decrypting messages: public key and private key or secret key. Section 2(1) (f) of the Information Technology Act 2000 talks about this kind of encryption.

The encryption is done using the public key which is known to many but decryption can only be done by the individual who has the private key known to the receiver only. It helps in protecting the digital signature from forgery. Asymmetric encryption is a relatively modern method.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual Property Rights (IPRs) are the rights associated with intangible property owned by a person/company and protected against use without consent. Thus, rights relating to ownership of intellectual property are called Intellectual Property Rights. These rights aim to protect intellectual property (creations of human intellect) by allowing the creators

of trademarks, patents, or copyrighted works to benefit from their creations. The Universal Declaration of Human Rights (UDHR) also refers to intellectual property rights under Article 27 which states that “*Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*”

Thus, the purpose of IPR is to reward human intellect by providing exclusive rights to the creators over their inventions, artistic, musical works, etc.

MEANING AND NATURE OF THE INTELLECTUAL PROPERTY

Intellectual property (IP) is an intangible property that comes into existence through human intellect. It refers to the creations of the mind or the products of human intellect such as inventions; designs; literary and artistic works; symbols, names and images used in commerce.

The “Convention Establishing the World Intellectual Property Organisation” states that “intellectual property” shall include the rights relating to: —

1. literary, artistic, and scientific works,
2. performances of performing artists, phonograms, and broadcasts,
3. inventions in all fields of human endeavour,
4. scientific discoveries,
5. industrial designs,
6. trademarks, service marks, commercial names and designations,
7. protection against unfair competition, and
8. all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

Other categories of intellectual property include geographical indications, rights in respect of know-how or undisclosed information, and layout designs of integrated circuits.

MEANING OF INTELLECTUAL PROPERTY RIGHTS

The term “Intellectual Property Rights (IPR)” is used to refer to the bundle of rights conferred by law on a creator/owner of intellectual property. These are the rights that a person has over the creations of his mind. They seek to protect the interests of the creators by rewarding their mental labour and allowing them to retain property rights over their creations. The creators and inventors are thus allowed to benefit from their creations. IP

rights are the legal rights governing the use of intellectual property.

Need for legal protection of intellectual property

The various reasons behind granting protection to intellectual property through the enactment of suitable Intellectual Property (IP) laws are as follows:

1. To encourage inventions and creations that promote the social, economic, scientific, and cultural development of society by incentivising the creators and allowing them to make economic gains out of their creations.
2. To provide legal protection to intellectual creations.
3. To prevent third parties from enjoying the fruits of someone else's creativity.
4. To facilitate fair trading.
5. To promote creativity and its dissemination.
6. Giving recognition to the efforts of creators.
7. Preventing the infringement of proprietary rights of creators in their creations from unauthorised use.
8. To encourage investment of skill, time, finance, and other resources into innovation activities in a manner that is beneficial to society.

ADVANTAGES AND DISADVANTAGES OF INTELLECTUAL PROPERTY RIGHTS

Advantages of Intellectual Property Rights

1. IPR protection gives the business a competitive advantage over other similar businesses.
2. IPR protection allows to prevent unauthorized use of intellectual property and works.
3. IPR enhances the value of the company and also opens avenues for collaborations and opportunities for generating income such as by entering into licensing agreements to exploit/work the invention/work.
4. IPR helps to attract clients and creates brand value. For example, the consumers start identifying company's products with the unique logo or registered trademark.

Disadvantages of Intellectual Property Rights

1. It can incur additional costs for getting IPR protection including legal costs and other fees.

2. Even after getting the intellectual property right, one might still face a lot of difficulties in curbing the copying and unauthorised use of the work. Moreover, sometimes an attempt to enforce IP rights could lead to a reduction in the consumer base.
3. IP rights aren't absolute. There are certain limitations and conditions imposed by law on the exercise of these rights (such as a limited period of protection and compulsory licensing provisions) in the interests of the general public.

COMPONENTS OF INTELLECTUAL PROPERTY RIGHTS

Copyright

The term 'copyright' concerns the rights of the creators/authors of literary and artistic works. A copyright is also called a 'literary right' or 'author's right'. Copyright gives an author exclusive right to his creation and prevents the copying and unauthorized publishing of his work. Copyright protection begins at the very moment a work is created and expressed in some tangible form. Copyright protection is granted to a work that is an original creation. Also, the protection extends only to expressions. Mere ideas without any tangible expression are not granted legal protection and do not form the subject matter of copyright.

Copyright protects the following two rights of the author:

1. **Economic rights** i.e., the right of the owner to deprive financial benefit from the use of their works by others. For instance, the right to prohibit or authorize reproduction of the work in various forms, the right to prohibit unauthorized translation of the work, etc.
2. **Moral rights** i.e., protection of non-economic interests of the author. For instance, the right to oppose changes to work and the right to claim authorship, etc.

The following categories of works typically come under copyright protection:

- Literary works such as novels, plays, poems, and newspaper articles;
- Computer programs and databases;
- Films, musical compositions, and choreography;
- Artistic works such as photographs, paintings, drawings, and sculpture;
- Architecture and advertisements, maps, and technical drawings.

In India, the term of copyright protection extends throughout the lifetime of the author and then 60 years after his death.

The Copyright Act, 1957: Law relating to copyright in India

The Copyright Act, 1957 is a comprehensive legislation dealing with copyrights in India. The Act regulates the various aspects relating to copyright regime in India such as:

- Registration of copyright
- Publication term of copyright
- Assignment, and licence of copyright
- Special rights of broadcasting organisation and performer's rights
- Infringement of copyright and remedies thereof
- Establishment of copyright authorities and copyright societies
- International Copyright

The term of copyright protection provided under the Act for the various categories of works is given below:

1. Literary, dramatic, musical and artistic works: Life of the author plus 60 years after death.
2. Anonymous and pseudonymous works: 60 years from the date of publication. However, if the identity of the author is disclosed before the expiry of that 60 years, then the term of protection shall be life of the author plus 60 years after death.
3. Posthumous works: 60 years from publication.
4. Cinematograph films: 60 years from publication.
5. Sound recordings: 60 years from publication.
6. Government work: 60 years from publication.
7. Works of public undertakings: 60 years from publication.
8. Works of international organizations: 60 years from the publication of the work.

Copyright infringement

Section 51 of the Copyright Act, 1957 provides for 'What constitutes copyright infringement'.

Copyright is said to be infringed:

1. when a person does something that the owner of the copyright has the exclusive right

to do, or permits for profit the use of any place for the purpose of the communication of the work to the public, where such communication constitutes an infringement of the copyright in the work, without a licence or in violation of the conditions of the licence.

2. When any person makes for sale or hire, sells or lets for hire, or displays or offers for sale or hire, or distributes either for the purpose of trade or to such an extent as to prejudice the owner of the copyright, or exhibits in public, or imports into India any infringing copies of the work.

Section 52 enlists the acts which do not constitute an infringement of copyright such as fair dealing in any work for personal, private use or for research, reproducing any work for the purpose of a judicial proceeding or replication by a teacher or a pupil in the course of teaching etc.

It is pertinent to note that the Copyright Act provides for both civil and criminal remedies against infringement of copyright.

REGISTER A COPYRIGHT IN INDIA

The Registrar of Copyrights maintains a Register of Copyrights wherein he enters the names or titles of works and the names and addresses of authors, publishers and owners of the copyright. This entering or recording of names and other particulars of the copyright owners in the register of copyrights is called Registration of copyright.

The procedure for registration of copyright in India is provided under Section 45 of the Copyright Act, 1957 read with Chapter XIII of the Copyright Rules, 2013.

Steps to register copyright

1. Filing of application: The author/publisher/owner or any other person interested in the copyright can make an application (Form-XIV of Copyright Rules) for registration of copyright to the Registrar of Copyrights. Such application must be accompanied by the prescribed fee for entering particulars of the work in the Register of Copyrights.

Also, an application for registration of copyright shall be in respect of one work only. It should be signed only by the applicant, who may be the owner or author of the right. In case, the application is made by the owner of the copyright, an original copy of a no-objection certificate issued by the author in the favour of the owner has

- to be submitted.
2. Application for registration of copyright in an unpublished work: An application for registration of an unpublished work should be accompanied by two copies of the work.
 3. Application for registration regarding an artistic work that is being used or could be used in connection with any goods or services: In case the application for registration is regarding an artistic work that is or can be used in relation to any goods or services, the application must include a statement along with a Certificate from the Registrar of Trademarks that no trademark identical to or deceptively similar to such artistic work has been registered under the Trademarks Act, 1999 or no such application has been made.
 4. Application for registration in respect of an artistic work which is capable of being registered as a design: In this case, the application must be supported by an affidavit declaring that:
 - ✚ The design has not been registered under the Designs Act, 2000, and
 - ✚ That it has not been applied to an article through an industrial process and reproduced more than 50 times.
 - ✚ Mode of filing the application: The application for registration of copyright can be filed.
 5. Notice of application: The person applying for registration of copyright has to give the notice of the application to every person who claims to have, or has any interest in the subject matter of the copyright or who is disputing the rights of the applicant to the copyright.
 6. Entering of particulars in Register of Copyright: A thirty-day period is given for filing of objections and if no objections to the registration are received by the Registrar, and on being satisfied that the particulars stated in the application are correct, the Registrar of Copyright shall enter such particulars in the Register of Copyrights.
 7. Completion of registration process: The registration process is complete when a copy of the entries made in the register of copyrights is signed and issued by the Registrar of Copyrights or by the Deputy Registrar of Copyrights. Also, every entry made by the Registrar of Copyrights has to be published by him in the prescribed manner.

NEED AND BENEFITS OF REGISTRATION OF COPYRIGHT

The registration of copyright is optional. However, the registration of copyright offers several advantages to the author or owner of copyright. This can be discerned from Section 48 of the Copyright Act. Section 48 provides that the register of copyright is prima facie evidence of the particulars entered therein and shall be admissible in evidence in all courts. Thus, a person who has got the copyright registered in his name is generally presumed to be the author/owner of the work. Registration of copyright is beneficial due to the following reasons:

- It allows the owner to protect his work from being used in an unauthorised manner.
- It becomes easier to claim ownership and royalties for your work when it is to be used or adapted in any manner.
- Copyright registration specifies the date of publication.
- Registration of copyright in your name might work in your favour in case of any claim of copyright infringement.

Trademark

Meaning & Definition

A “Trademark” [TM] is defined under Section 2(b) of the Indian Trademarks Act, 1999, as a “mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include a shape of goods, their packaging, and combination of colors.”

Simply put, a trademark may include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging, or combination of colors or combinations. (Section 2(m)). The only qualification for a trademark is its capacity to distinguish one person’s goods or services from another.

There is usually a lot of confusion surrounding the kind of trademarks that can be registered under the Trademarks Act 1999. While choosing an apt brand that can be registered might seem a long-drawn process, it is straightforward, and the trick is conversing with what cannot be registered.

The Trademarks Act (1999) makes this easy by dividing what cannot be registered into two grounds: absolute grounds of refusal (Section 9) and relative grounds of refusal (Section 11).

What cannot be Registered as a Trademark?

Section 9 disallows the following trademarks from being registered trademark:

Trademarks that do not have a distinctive characteristic. This means that trademarks that cannot distinguish one person's goods or services from another cannot be registered. The whole purpose of trademark law is to enable distinction between brands, and no mark that takes away from this purpose can be registered. Trademarks that are arbitrarily chosen or fanciful can be considered the most distinctive trademark.

Trademarks that describe the good or service give the consumer an idea about the quality, quantity, or geographic origin of the particular good or service. For instance, the mark 'Cold and Creamy' is considered highly descriptive for ice cream products.

Marks that have become customary in the current language. For example, a consumer associates a restaurant with a chef. Apart from this, deceptive marks that hurt religious sentiments are obscene or describe the shape of the good and cannot be registered.

Section 11 disallows the following from being registered trademarks:

Trademarks may cause a 'likelihood of confusion.' This means identical marks on similar goods and similar marks on identical/similar goods. A consumer views the trademark entirely, and the test is to see if the consumer can distinguish between similar brands.

For example, In *Society Des Products vs. V.M. Confectionary Limited*, the court held that the words ZERO and AERO be similar as mere phonetic dissimilarity was not enough to enable an ordinary person to distinguish between the two.

Well-known: Trademarks that people are familiar with cannot be registered even if the goods are not similar, as this would affect the reputation of the person who owns the well-known trademark.

In a nutshell, trademarks that are not distinctive, that are descriptive, or that give rise to a likelihood of confusion cannot be registered.

Registrable Trademark

This brings us to the most critical question of which trademarks are registrable

in India. On the spectrum of registrability, invented/fanciful words rate first. Words that have no meaning and are a random combination of two or more words/letters are invented words. Almost on an equal footing are arbitrary trademarks. Trademarks are familiar names but are unrelated to the goods or services they represent. At the other end are trademarks that cannot be registered. They are descriptive and generic trademarks.

In between are suggestive trademarks. They may or may not be registrable depending on the extent to which they suggest the nature of the goods/services. This means that suggestive trademarks that require a certain amount of imagination to determine the nature of the goods and services can be registered.

As long as your trademark differs from existing trademarks and does not describe the nature of the goods or services it represents, it can be registered!

Types of Trademarks

Types of trademarks include service marks, collective marks, certification marks, etc. Whatever the trademark type, the trademark's purpose is the same. Particularly to distinguish the source of the goods or services. And also assure the consumers of the quality of the product or service. A trademark can be divided into the following seven categories:

1. Word marks:

Word marks may be words, letters, or numerals. A word mark only gives the proprietor a right to the word, letter, or numerical, and no right is sought concerning the representation of the mark.

2. Device marks:

A device mark uniquely represents a logo, label, or design in the image format and may also contain a word or a combination of words.

3. Service marks:

A service mark is nothing but a mark that distinguishes one person's services from another. Service marks do not represent goods but the services offered by a person/company. They are used in a service business where actual goods under the mark are not traded. It is a mechanism available to protect marks used in the service industry.

Thus companies providing services like computer hardware and software

assembly and maintenance, restaurant and hotel services, courier and transport, beauty and health care, advertising, publishing, education, and the like are now in a position to protect their names and marks from being misused by others. As service marks, the substantive and procedural rules governing the service marks are fundamentally the same.

4. Collective Marks:

Marks being used by a group of companies can now be protected by the group collectively. Collective marks inform the public about a particular product feature used for the collective mark. The owner of such marks may be an association, public institution, or cooperative. Collective trademarks are also used to promote particular products with certain characteristics specific to the producer in a given region.

5. Certification Marks:

Certification marks are used to define standards. They assure the consumers that the product meets specific prescribed standards. A certification mark on a product indicates that the product has successfully passed a standard test specified. It assures the consumer that the manufacturers have gone through an audit process to ensure the quality of the product.

For example, Toys, Electrical goods, etc., have a marking that indicates the product's safety and quality.

The difference between the certification mark and the collective mark is that a particular enterprise or association member uses the collective mark. In contrast, a certification mark may be used by anybody who meets the defined standards.

6. Well-known marks:

When a mark is easily recognized among a large percentage of the population, it achieves the trademark status of a well-known mark. Well-known marks enjoy more excellent protection, and persons will not be able to register or use marks imitations of well-known trademarks. A trademark needs to be known/recognized by a relevant section of people to be well-known. These people include actual or potential customers, people involved in the distribution, and business service dealing with the goods/services.

7. Unconventional Trademarks:

The trademarks that get recognition for their inherently distinctive feature are unconventional. Unconventional trademarks include the following categories:

Colour Trademark: If a particular color has become a distinctive feature indicating the goods of a specific trader, it can be registered as a trademark. For example, Red Wine.

Sound Marks: Signs that are perceived by hearing and distinguishable by their distinctive and exclusive sound can be registered as sound marks. For example, Musical notes.

Shape Marks: When the shape of goods or packaging has some distinctive feature, it can be registered. For example, Ornamental Lamps.

Smell Marks: When the smell is distinctive and cannot be mistaken for an associated product, it can be registered as a smell mark. For example, Perfumes.

PATENTS

A patent is an exclusive right granted for an invention or innovation, which might be a product, a method or a process, that introduces a novel way of doing something or offers a new technical solution to a problem. In other words, it is a right of monopoly granted to a person who has invented:

1. a new and useful article, or
2. improvement of an existing article, or
3. a new process of making an article.

A patent is granted for inventions having industrial and commercial value. It is the exclusive right to manufacture the new article/manufacture the article with the invented process for a limited period of time (usually 20 years from the filing date of the application) in exchange for disclosure of the invention. A patent owner can sell his patent or grant licence to others to exploit the same.

Criteria for patentability of an invention

1. It should be novel.
2. It should have inventive steps or it must be non-obvious.
3. It should be capable of Industrial application.

Protection is given by patents

- The patent owner possesses the exclusive right to prevent others from commercially exploiting the patented invention.
- Third parties are prevented from manufacturing, using, distributing, selling etc. the patented invention/product without the consent of the patent owner.

The Patents Act, 1970: Patent law in India

The invention of a person can be patented only if the procedure and other requirements prescribed in the Patents Act, 1970 are fulfilled. The Patent Act, 1970 provides for a detailed procedure for obtaining a patent, right from the filing of an application to the grant of a patent. The Act also contains provisions for rights and obligations of the patentee, term of the patent, transfer of patent, surrender, revocation, and restoration of patent, infringement of patent, and remedies thereof. The Act provides for patent protection for a period of 20 years after which the technology or invention goes to the public domain.

Section 3 of the Act provides a list of non-patentable inventions for which no patent could be granted. Under Section 4, the inventions relating to atomic energy are also declared as non-patentable.

It is worth mentioning that earlier no product patent could be granted for medicine, food items and chemicals and only the process of manufacturing medicines, food items and chemicals could be patented. However, after the Patent (Amendment) Act, 2005 product patents can be issued for manufacturing these products.

Patent infringement and remedies

Any violation of the rights of the patentee constitutes infringement of patent such as a colorable imitation of your invention or taking of the essential features of your invention. Under the Patents Act, Sections 47 and 107-A provides for the acts that shall not be considered as an infringement of patent. For example, the import of any machine or other articles by or on behalf of the government or the manufacturing or use of a patented process by or on behalf of the government does not constitute patent infringement. The various

remedies available against patent infringement are as follows:

- Injunction
- Damages or account of profits
- Delivery up or destruction of infringing goods
- Certificate of validity

Procedure of obtaining a patent in India

Following are the steps involved in obtaining a patent:

1. Filing of application

- Place of filing patent application: A patent application has to be filed at the head office of the patent office or the branch office, within whose territorial limits:
 1. Applicant normally resides or has a domicile, or
 2. Applicant has a place of business, or
 3. At the place where the invention actually originated.
- Form of application: Every patent application shall be for one invention only.
- Every application must specify that the applicant possesses the invention and identify the individual claiming to be the true and first inventor. If the individual claiming to be the true and first inventor is not the applicant or one of the applicants, the application must state that the applicant believes the person so listed/named to be the true and first inventor.
- Application must be accompanied by a provisional or a complete specification.

2. Filing of provisional and complete specification

- What is patent specification: A patent specification is a technical document describing the invention. The provisional specification gives the initial description of the invention on the filing of the patent application. Whereas a complete specification gives full and sufficient detail of an invention in such a manner that a person skilled in the art can use the invention when he reads such a description.
- If the patent application is accompanied by a provisional specification, the complete specification has to be filed within 12 months from the date of the filing of such application. In case it is not filed within the said period, the application is deemed to have been abandoned.

3. **Claim of priority date:** Priority date is the date on which the patentee claims his

invention. There shall be a priority date for each claim of a complete specification. Generally, the priority date is the date of filing of the provisional specification provided the claims contained therein are fairly based on the description of the invention as given in the provisional specification. But when the patent application is accompanied by complete specification or if any application is post-dated to the date of filing of complete specification, in that case the priority date shall be the date of filing of the complete specification.

4. **Amendment of specification:** The applicant may amend the application, the complete specification and other documents before or after the grant of the patent. Such amendment shall be in accordance with the procedure prescribed as regards to the permission of the Controller and publication of the amendment.

5. Publication and Examination of application

- The patent application shall not be open to the public until the expiry of 18 months from the date of filing of the application or the date of the priority of the application. However, applicants may request the Controller to publish the application at an earlier date.
 - The application is published within one month after the expiry of the said period of 18 months.
 - Thereafter, a request has to be made by the applicant or other interested persons for examination of the application. Such a request shall be made within 48 months from the date of priority of the application or from the date of filing of application, whichever is earlier. If the request is not made within the prescribed period, the application is treated as withdrawn.
6. **Time for putting application in order for grant:** The applicant must comply with all the requirements imposed on him by or under the Act in relation to the application within 12 months from the date on which the Controller forwarded to the applicant the first statement of objections to the application, complete specification, or other documents related thereto.

7. Opposition to grant of patent

Pre-grant opposition: Before the patent has been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of the patent.

Post-grant opposition: After the grant of the patent but before the expiry of 1 year from the date of publication of grant of patent, any interested person may give notice of opposition to the Controller. Thereafter, the Controller constitutes the Opposition Board and the patent may be revoked on the basis of the report of the Board.

8. Grant of patent

If the application for patent is found to be in order for grant of patent, the patent shall be granted.

On the grant of patent, the Controller publishes the fact of such grant and thereupon the application and other documents shall be open for public inspection.

BENEFITS OF PATENT REGISTRATION

1. Patent registration ensures the complete protection of your patent/invention against any unauthorised use for a period of 20 years.
2. Patent registration allows to enjoy monopoly in the market as regards your invention during the period of patent protection.
3. Patent registration confers exclusive right to exploit the patent on patentee or his licensee or assignee.
4. You can Licence the patent and gain royalties for the same.

Summary

Therefore the main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. This gives economic incentive for their creation, because it allows people to profit from the information and intellectual goods they create. These economic incentives are expected to stimulate innovation and contribute to the technological progress of countries, which depends on the extent of protection granted to innovators.

